UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

Florida Regulations and Statutes Applicable to the State's Approved Clean Water Action Section 404 Program

December 14, 2020

State citation	Topic/subject	Date
Part IV, Chapter 373, F.S. (Management and Storage of Surface Waters)	Management and Storage of Surface Waters	Material is incorporated as it exists on December 14, 2020
Chapter 62-330, F.A.C. (Environmental Resource Permitting)	Environmental Resource Permitting	Material is incorporated as it exists on December 14, 2020
Chapter 62-340, F.A.C. (Delineation of the Landward Extent of Wetlands and Surface Waters)	Delineation of the Landward Extent of Wetlands and Surface Waters	Material is incorporated as it exists on December 14, 2020
Chapter 62-331, F.A.C. (State 404 Program)	State 404 Program	Material is incorporated as it exists on December 14, 2020

Chapter 373, F.S.
Management and Storage of Surface Waters

373.342 Permits.—

(1) The governing board of any water management district which, pursuant to the authority delegated to it by the department under s. 373.308 or s. 373.309, regulates water wells may in its discretion authorize its executive director to issue permits for the construction, repair, or modification of any water well.

(2) In granting authority to its executive director under subsection (1), the governing board shall prescribe those certain circumstances in which such a permit may be issued.

History.—s. 3, ch. 79-160; s. 1, ch. 84-94; ss. 21, 23, ch. 88-242; s. 10, ch. 91-305.

PART IV
MANAGEMENT AND STORAGE OF SURFACE WATERS

(6) "Closed system" means any reservoir or works located entirely within agricultural lands owned or controlled by the user and which requires water only for the filling, replenishing, and maintaining the water level thereof.

(7) "Alter" means to extend a dam or works beyond maintenance in its original condition, including changes which may increase or diminish the flow or storage of surface water which may affect the safety of such dam or works.

(8) "Maintenance" or "repairs" means remedial work of a nature as may affect the safety of any dam, impoundment, reservoir, or appurtenant work or works, but excludes routine custodial maintenance.

(9) "Drainage basin" means a subdivision of a watershed.

(10) "Stormwater management system" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

(11) "State water quality standards" means water quality standards adopted pursuant to chapter 403.

(12) "Watershed" means the land area which contributes to the flow of water into a receiving body of water.

(13) "Dredging" means excavation, by any means, in surface waters or wetlands, as delineated in s. 373.421(1). It also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, as delineated in s. 373.421(1), directly or via an excavated water body or series of water bodies.

(14) "Filling" means the deposition, by any means, of materials in surface waters or wetlands, as delineated in s. 373.421(1).

(15) "Estuary" means a semienclosed, naturally existing coastal body of water which has a free connection with the open sea and within which seawater is measurably diluted with fresh water derived from riverine systems.

(16) "Lagoon" means a naturally existing coastal zone depression which is below mean high water and which has permanent or ephemeral communications with the sea, but which is protected from the sea by some type of naturally existing barrier.

(17) "Seawall" means a manmade wall or encroachment, except riprap, which is made to break the force of waves and to protect the shore from erosion.

(18) "Ecological value" means the value of functions performed by uplands, wetlands, and other surface waters to the abundance, diversity, and habitats of fish, wildlife, and listed species. These functions include, but are not limited to, providing cover and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; and natural water storage, natural flow attenuation, and water quality improvement, which enhances fish, wildlife, and listed species utilization.

(19) "Mitigation bank" means a project permitted under s. 373.4136 undertaken to provide for the withdrawal of mitigation credits to offset adverse impacts authorized by a permit under this part.

(20) "Mitigation credit" means a standard unit of measure which represents the increase in ecological value resulting from restoration, enhancement, preservation, or creation activities.

(21) "Mitigation service area" means the geographic area within which mitigation credits from a mitigation bank may be used to offset adverse impacts of activities regulated under this part.

(22) "Offsite regional mitigation" means mitigation on an area of land off the site of an activity permitted under this part, where an applicant proposes to mitigate the adverse impacts of only the applicant's specific activity as a requirement of the permit, which provides regional ecological value, and which is not a mitigation bank permitted under s. 373.4136.

History.—s. 1, part IV, ch. 72-299; s. 18, ch. 73-190; s. 4, ch. 80-259; s. 1, ch. 82-101; s. 11, ch. 89-279; s. 28, ch. 93-213; s. 4, ch. 96-371.

373.406 Exemptions.—The following exemptions shall apply:

(1) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any natural person to capture, discharge, and use water for purposes permitted by law.

(2) Notwithstanding s. 403.927, nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land, including, but not limited to, activities that may impede or

373.403 Definitions.—When appearing in this part or in any rule, regulation, or order adopted pursuant thereto, the following terms mean:

(1) "Dam" means any artificial or natural barrier, with appurtenant works, raised to obstruct or impound, or which does obstruct or impound, any of the surface waters of the state.

(2) "Appurtenant works" means any artificial improvements to a dam which might affect the safety of such dam or, when employed, might affect the holding capacity of such dam or of the reservoir or impoundment created by such dam.

(3) "Impoundment" means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

(4) "Reservoir" means any artificial or natural holding area which contains or will contain the water impounded by a dam.

(5) "Works" means all artificial structures, including, but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state.

divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the normal and customary practice of such occupation in the area. However, such alteration or activity may not be for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands. This exemption applies to lands classified as agricultural pursuant to s. 193.461 and to activities requiring an environmental resource permit pursuant to this part. This exemption does not apply to any activities previously authorized by an environmental resource permit or a management and storage of surface water permit issued pursuant to this part or a dredge and fill permit issued pursuant to chapter 403. This exemption has retroactive application to July 1, 1984.

(3) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to be applicable to construction, operation, or maintenance of any agricultural closed system. However, part II of this chapter shall be applicable as to the taking and discharging of water for filling, replenishing, and maintaining the water level in any such agricultural closed system. This subsection shall not be construed to eliminate the necessity to meet generally accepted engineering practices for construction, operation, and maintenance of dams, dikes, or levees.

(4) All rights and restrictions set forth in this section shall be enforced by the governing board or the Department of Environmental Protection or its successor agency, and nothing contained herein shall be construed to establish a basis for a cause of action for private litigants.

(5) The department or the governing board may by rule establish general permits for stormwater management systems which have, either singularly or cumulatively, minimal environmental impact. The department or the governing board also may establish by rule exemptions or general permits that implement interagency agreements entered into pursuant to s. 373.046, s. 378.202, s. 378.205, or s. 378.402.

(6) Any district or the department may exempt from regulation under this part those activities that the district or department determines will have only minimal or insignificant individual or cumulative adverse impacts on the water resources of the district. The district and the department are authorized to determine, on a case-by-case basis, whether a specific activity comes within this exemption. Requests to qualify for this exemption shall be submitted in writing to the district or department, and such activities shall not be commenced without a written determination from the district or department confirming that the activity qualifies for the exemption.

(7) Nothing in this part, or in any rule or order adopted under this part, may be construed to require a permit for mining activities for which an operator receives a life-of-the-mine permit under s. 378.901.

(8) Certified aquaculture activities which apply appropriate best management practices adopted pursuant to s. 597.004 are exempt from this part.

(9) Implementation of measures having the primary purpose of environmental restoration or water quality improvement on agricultural lands are exempt from regulation under this part where these measures or practices are determined by the district or department, on a case-by-case basis, to have minimal or insignificant individual and cumulative adverse impact on the water resources of the state. The district or department shall provide written notification as to whether the proposed activity qualifies for the exemption within 30 days after receipt of a written notice requesting the exemption. No activity under this exemption shall commence until the district or department has provided written notice that the activity qualifies for the exemption.

(10) Implementation of interim measures or best management practices adopted pursuant to s. 403.067 that are by rule designated as having minimal individual or cumulative adverse impacts to the water resources of the state are exempt from regulation under this part.

(11) Any district or the department may adopt rules to exempt from regulation under this part any system for a mining or mining-related activity that is described in or covered by an exemption confirmation letter issued by the district pursuant to applicable rules implementing this part that were in effect at the time the letter was issued, and that will not be harmful to the water resources. Such rules may include provisions for the duration of this exemption.

(12) An overwater pier, dock, or a similar structure located in a deepwater port listed in s. 311.09 is not considered to be part of a stormwater management system for which this chapter or chapter 403 requires stormwater from impervious surfaces to be treated if:

(a) The port has a stormwater pollution prevention plan for industrial activities pursuant to the National Pollutant Discharge Elimination System Program; and

(b) The stormwater pollution prevention plan also provides similar pollution prevention measures for other activities that are not subject to the National Pollutant Discharge Elimination System Program and that occur on the port's overwater piers, docks, and similar structures.

(13) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, applies to construction, alteration, operation, or maintenance of any wholly owned, manmade excavated farm ponds, as defined in s. 403.927, constructed entirely in uplands. Alteration or maintenance may not involve any work to connect the farm pond to, or expand the farm pond into, other wetlands or other surface waters. This exemption does not apply to any farm pond that covers an area greater than 15 acres and has an average depth greater than 15 feet, or is less than 50 feet from any wetlands.

(14) Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, may require a permit for activities affecting wetlands created solely by the unauthorized flooding or interference with the natural flow of surface water caused by an unaffiliated adjoining landowner. Requests to qualify for this exemption must be made within 7 years after the cause of such unauthorized flooding or unauthorized interference with the natural flow of surface water and must be submitted in writing to the district or department. Such activities may not begin without a written determination from the district or department confirming that the activity qualifies for the exemption. This exemption does not expand the jurisdiction of the department or the water management districts and does not apply to activities that discharge dredged or fill material into waters of the United States, including wetlands, subject to federal jurisdiction under s. 404 of the federal Clean Water Act, 33 U.S.C. s. 1344.

History.—s. 2, part IV, ch. 72-299; s. 47, ch. 79-65; s. 5, ch. 80-259; s. 2, ch. 82-101; s. 12, ch. 89-279; s. 268, ch. 94-356; s. 2, ch. 95-215; s. 2, ch. 96-370; s. 15, ch. 98-203; s. 21, ch. 98-333; s. 2, ch. 2000-130; s. 2, ch. 2002-253; s. 6, ch. 2011-164; s. 1, ch. 2011-165; s. 14, ch. 2013-92.

373.407 Determination of qualification for an agricultural-related exemption.— In the event of a dispute as to the applicability of an exemption, a water management district or landowner may request the Department of Agriculture and Consumer Services to make a binding determination as to whether an existing or proposed activity qualifies for an agricultural-related exemption under s. 373.406(2). The Department of Agriculture and Consumer Services and each water management district shall enter into a memorandum of agreement or amend an existing memorandum of agreement which sets forth processes and procedures by which the Department of Agriculture and Consumer Services shall undertake its review, make a determination effectively and efficiently, and provide notice of its determination to the applicable water management district or landowner. The Department of Agriculture and Consumer Services has exclusive authority to make the determination under this section and may adopt rules to implement this section and s. 373.406(2).

History.—s. 8, ch. 2006-255; s. 2, ch. 2011-165.

373.409 Headgates, valves, and measuring devices.—

(1) The department or the governing board may, by regulation, require the owner of any dam, impoundment, reservoir, appurtenant work, or works subject to the provisions of this part to install and maintain a substantial and serviceable headgate or valve at the point designated by the department or the governing board to measure the water discharged or diverted.

(2) If any owner shall not have constructed or installed such headgate or valve or such measuring device within 60 days after the governing board or department has ordered its construction, the governing board or department shall have such headgate, valve, or measuring device constructed or installed, and the costs of installing the headgate, valve, or measuring device shall be a lien against the owner's land upon which such installation takes place until the governing board or department is reimbursed in full.

(3) No person shall alter or tamper with a measuring device so as to cause it to register other than the actual amount of water diverted, discharged, or taken. Violation of this subsection shall be a misdemeanor of the second degree, punishable under s. 775.082(4)(b).

History.—s. 3, part IV, ch. 72-299; s. 28, ch. 87-225; s. 49, ch. 91-221.

373.413 Permits for construction or alteration.—

(1) Except for the exemptions set forth herein, the governing board or the department may require such permits and impose such reasonable conditions as are necessary to assure that the construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the provisions of this part and applicable rules promulgated thereto and will not be harmful to the water resources of the district. The department or the governing board may delineate areas within the district wherein permits may be required.

(2) A person proposing to construct or alter a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works subject to such permit shall apply to the governing board or department for a permit authorizing such construction or alteration. The application shall contain the following:

(a) Name and address of the applicant.

(b) Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land.

(c) Location of the work.

(d) Sketches of construction pending tentative approval.

(e) Name and address of the person who prepared the plans and specifications of construction.

(f) Name and address of the person who will construct the proposed work.

(g) General purpose of the proposed work.

(h) Such other information as the governing board or department may require.

(3) After receipt of an application for a permit, the governing board or department shall publish notice of the application by sending a notice to any persons who have filed a written request for notification of any pending applications affecting the particular designated area. Such notice may be sent by regular mail. The notice shall contain the name and address of the applicant; a brief description of the proposed activity, including any mitigation; the location of the proposed activity, including whether it is located within an Outstanding Florida Water or aquatic preserve; a map identifying the location of the proposed activity subject to the application; a depiction of the proposed activity subject to the application; a name or number identifying the application and the office where the application can be inspected; and any other information required by rule.

(4) In addition to the notice required by subsection (3), the governing board or department may publish, or require an applicant to publish at the applicant's expense, in a newspaper of general circulation within the affected area, a notice of receipt of the application and a notice of intended agency action. This subsection does not limit the discretionary authority of the department or the governing board of a water management district to publish, or to require an applicant to publish at the applicant's expense, any notice under this chapter. The governing board or department shall also provide notice of this intended agency action to the applicant and to persons who have requested a copy of the intended agency action for that specific application.

(5) The governing board or department may charge a subscription fee to any person who has filed a written request for notification of any pending applications to cover the cost of duplication and mailing charges.

(6) It is the intent of the Legislature that the governing board or department exercise flexibility in the permitting of stormwater management systems associated with the construction or alteration of systems serving state transportation projects and facilities. Because of the unique limitations of linear facilities, the governing board or department shall balance the expenditure of public funds for stormwater treatment for state transportation projects and facilities with the benefits to the public in providing the most cost-efficient and effective method of achieving the treatment objectives. In consideration thereof, the governing board or department shall allow alternatives to onsite treatment, including, but not limited to, regional stormwater treatment systems. The Department of Transportation is responsible for treating stormwater generated from state transportation projects but is not responsible for the abatement of pollutants and flows entering its stormwater management systems from offsite sources; however, this subsection does not prohibit the Department of Transportation from receiving and managing such pollutants and flows when cost effective and prudent. Further, in association with right-of-way acquisition for state transportation projects, the Department of Transportation is responsible for providing stormwater treatment and attenuation for the acquired right-of-way but is not responsible for modifying permits for adjacent lands affected by right-of-way acquisition when it is not the permittee. The governing board or department may establish, by rule, specific criteria to implement the management and treatment alternatives and activities under this subsection.

History.—s. 4, part IV, ch. 72-299; s. 19, ch. 73-190; s. 14, ch. 78-95; s. 13, ch. 89-279; s. 500, ch. 94-356; s. 74, ch. 2012-174.

373.4131 Statewide environmental resource permitting rules.—

(1) The department shall initiate rulemaking to adopt, in coordination with the water management districts, statewide environmental resource permitting rules governing the construction, alteration, operation, maintenance, repair, abandonment, and removal of any stormwater management system, dam, impoundment, reservoir, appurtenant work, works, or any combination thereof, under this part.

(a) The rules must provide for statewide, consistent regulation of activities under this part and must include, at a minimum:

1. Criteria and thresholds for requiring permits.

2. Types of permits.

3. Procedures governing the review of applications and notices, duration and modification of permits, operational requirements, transfers of permits, provisions for emergencies, and provisions for abandonment and removal of systems.

4. Exemptions and general permits that do not allow significant adverse impacts to occur individually or cumulatively.

5. Conditions for issuance.

6. General permit conditions, including monitoring, inspection, and reporting requirements.

7. Standardized fee categories for activities under this part to promote consistency. The department and water management districts may amend fee rules to reflect the standardized fee categories but are not required to adopt identical fees for those categories.

8. Application, notice, and reporting forms. To the maximum extent practicable, the department and water management districts shall provide for electronic submittal of forms and notices.

9. An applicant's handbook that, at a minimum, contains general program information, application and review procedures, a specific discussion of how environmental criteria are evaluated, and discussion of stormwater quality and quantity criteria.

(b) The rules must provide for a conceptual permit for a municipality or county that creates a stormwater management master plan for urban infill and redevelopment areas or community redevelopment areas created under chapter 163. Upon approval by the department or water management district, the master plan shall become part of the conceptual permit issued by the department or water management district. The rules must additionally provide for an associated general permit for the construction and operation of urban redevelopment projects that meet the criteria established in the conceptual permit. The following requirements must also be met:

1. The conceptual permit and associated general permit must not conflict with the requirements of a federally approved program pursuant to s. 403.0885 or with the implementation of s. 403.067(7) regarding total maximum daily loads and basin management action plans.

2. Before a conceptual permit is granted, the municipality or county must assert that stormwater discharges from the urban redevelopment area do not cause or contribute to violations of water quality standards by demonstrating a net improvement in the quality of the discharged water existing on the date the conceptual permit is approved.

3. The conceptual permit may not expire for at least 20 years unless a shorter duration is requested and must include an option to renew.

4. The conceptual permit must describe the rate and volume of stormwater discharges from the urban redevelopment area, including the maximum rate and volume of stormwater discharges as of the date the conceptual permit is approved.

5. The conceptual permit must contain provisions regarding the use of stormwater best management practices and must ensure that stormwater management systems constructed within the urban redevelopment area are operated and maintained in compliance with s. 373.416.

(c) The rules must rely primarily on the rules of the department and water management districts in effect immediately prior to the effective date of this section, except that the department may:

1. Reconcile differences and conflicts to achieve a consistent statewide approach.

2. Account for different physical or natural characteristics, including special basin considerations, of individual water management districts.

3. Implement additional permit streamlining measures.

(d) The application of the rules must continue to be governed by the first sentence of s. 70.001(12).

(2)(a) Upon adoption of the rules, the water management districts shall implement the rules without the need for further rulemaking pursuant to s. 120.54. The rules adopted by the department pursuant to this section shall also be considered the rules of the water management districts. The districts and local governments shall have substantive jurisdiction to implement and interpret rules adopted by the department under this part, consistent with any guidance from the department, in any license or final order pursuant to s. 120.60 or s. 120.57(1)(l).

(b)1. A county, municipality, or local pollution control program that has a delegation of the environmental resource permit program authority or proposes to be delegated such authority under s. 373.441 shall without modification incorporate by reference the rules adopted pursuant to this section.

2. A county, municipality, or local pollution control program that has a delegation of the environmental resource permit program authority under s. 373.441 must amend its local ordinances or regulations to incorporate by reference the applicable rules adopted pursuant to this section within 12 months after the effective date of the rules.

3. Consistent with s. 373.441, this section does not prohibit a county, municipality, or local pollution control program from adopting or implementing regulations that are stricter than those adopted pursuant to this section.

4. The department and each local program with the authority to implement or seeking to implement a delegation of environmental resource permit program authority under s. 373.441 shall identify and reconcile any duplicative permitting processes as part of the delegation.

(c) Until the rules adopted pursuant to this section become effective, existing rules adopted pursuant to this part remain in full force and effect. Existing rules that are superseded by the rules adopted pursuant to this section may be repealed without further rulemaking pursuant to s. 120.54 by publication of a notice of repeal in the Florida Administrative Register and subsequent filing of a list of the rules repealed with the Department of State.

(3)(a) The water management districts, with department oversight, may continue to adopt rules governing design and performance standards for stormwater quality and quantity, and the department may incorporate the design and performance standards by reference for use within the geographic jurisdiction of each district.

(b) If a stormwater management system is designed in accordance with the stormwater treatment requirements and criteria adopted by the department or a water management district under this part, the system design is presumed not to cause or contribute to violations of applicable state water quality standards.

(c) If a stormwater management system is constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or exemption under this part, the stormwater discharged from the system is presumed not to cause or contribute to violations of applicable state water quality standards.

(4) Notwithstanding the adoption of rules pursuant to this section, the following activities shall continue to be governed by the rules adopted by the department, the water management districts, and delegated local programs under this part in effect before the effective date of the rules adopted pursuant to this section, unless the applicant elects review in accordance with the rules adopted pursuant to this section:

(a) The operation and maintenance of any stormwater management system, dam, impoundment, reservoir, appurtenant work, works, or any combination thereof legally in existence before the effective date of the rules adopted pursuant to this section if the terms and conditions of the permit, exemption, or other authorization for such activity continue to be met.

(b) The activities determined in writing by the department, a water management district, or a local government delegated local pollution control program authority under s. 373.441 to be exempt from the permitting requirements of this part, including self-certifications submitted to the department, a water management district, or a delegated local government before the effective date of the rules adopted pursuant to this section.

(c) The activities approved in a permit issued pursuant to this part and the review of activities proposed in a permit application that is complete before the effective date of the rules adopted pursuant to this section. This paragraph applies to any modification of the plans, terms, and conditions of the permit, including new activities, within the geographical area to which the permit applies and to any modification that lessens or does not increase

impacts. However, this paragraph does not apply to a modification that is reasonably expected to lead to additional or substantially different impacts.

(5) To ensure consistent implementation and interpretation of the rules adopted pursuant to this section, the department shall conduct or oversee regular assessment and training of its staff and the staffs of the water management districts and local governments delegated local pollution control program authority under s. 373.441. The training must include field inspections of publicly and privately owned stormwater structural controls, such as stormwater retention and detention ponds.

(6) By January 1, 2021:

(a) The department and the water management districts shall initiate rulemaking to update the stormwater design and operation regulations, including updates to the Environmental Resource Permit Applicant's Handbook, using the most recent scientific information available. As part of rule development, the department shall consider and address low-impact design best management practices and design criteria that increase the removal of nutrients from stormwater discharges, and measures for consistent application of the net improvement performance standard to ensure significant reductions of any pollutant loadings to a waterbody.

(b) The department shall review and evaluate permits and inspection data by those entities that submit a self-certification under s. 403.814(12) for compliance with state water quality standards and provide the Legislature with recommendations for improvements to the self-certification process, including, but not limited to, additional staff resources for department review of portions of the process where high-priority water quality issues justify such action.

History.—s. 1, ch. 2012-94; s. 36, ch. 2013-14; s. 1, ch. 2013-176; s. 5, ch. 2020-150.

373.4132 Dry storage facility permitting.—The governing board or the department shall require a permit under this part, including s. 373.4145, for the construction, alteration, operation, maintenance, abandonment, or removal of a dry storage facility for 10 or more vessels that is functionally associated with a boat launching area. As part of an applicant's demonstration that such a facility will not be harmful to the water resources and will not be inconsistent with the overall objectives of the district, the governing board or department shall require the applicant to provide reasonable assurance that the secondary impacts from the facility will not cause adverse impacts to the functions of wetlands and surface waters, including violations of state water quality standards applicable to waters as defined in s. 403.031(13), and will meet the public interest test of s. 373.414(1)(a), including the potential adverse impacts to manatees. Nothing in this section shall affect the authority of the governing board or the department to regulate such secondary impacts under this part for other regulated activities.

History.—s. 7, ch. 2006-220.

373.4133 Port conceptual permits.—

(1) The Legislature finds that seaport facilities are critical infrastructure facilities that significantly support the economic development of the state. The Legislature further finds that it is necessary to provide a method of priority permit review that allows seaports in this state to become internationally competitive.

(2) Any port listed in s. 311.09(1) may apply to the department for a port conceptual permit, including any applicable authorization under chapter 253 to use sovereignty submerged lands under a joint coastal permit pursuant to s. 161.055 or an environmental resource permit issued pursuant to this part, for all or a portion of the area within the geographic boundaries of the port. A private entity with a controlling interest in property used for private industrial marine activities in the immediate vicinity of a port listed in s. 311.09(1) may also apply for a port conceptual permit under this section. A port conceptual permit may be issued for a period of up to 20 years and extended one time for an additional 10 years. A port conceptual permit constitutes the state's conceptual certification of compliance with state water quality standards for purposes of s. 401 of the Clean Water Act and the state's conceptual determination that the activities contained in the port conceptual permit are consistent with the state coastal zone management program.

(3) A port conceptual permit application must contain sufficient information to provide reasonable assurance that the engineering and environmental concepts upon which the designs are based are likely to meet applicable rule criteria for issuance of construction permits for subsequent phases of the project. At a minimum, a port conceptual permit application must include the identification of proposed construction areas and areas where construction will

not occur; the estimated or maximum anticipated impacts to wetlands and other surface waters and any proposed mitigation for those impacts; the estimated or maximum amount of anticipated impervious surface and the nature of the stormwater treatment system for those areas; and the general location and types of activities on sovereignty submerged lands. Except where construction approval is requested as part of a port conceptual permit application, the application is not required to include final design specifications and drawings. The department shall include conditions in the port conceptual permit specifying the additional information that must be submitted as part of any request for a subsequent construction permit or authorization.

(4) In determining whether a port conceptual permit application shall be approved in whole, approved with modifications or conditions, or denied, the department shall effect a reasonable balance between the potential benefits of the facility and the impacts upon water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation of the facility.

(5) A port conceptual permit provides the permitholder with assurance, during the duration of the permit, that the engineering and environmental concepts upon which the designs of the port conceptual permit are based are likely to meet applicable rule criteria for the issuance of construction permits for subsequent phases of the project, if:

(a) There are no changes in the rules governing the conditions of issuance of permits for future phases of the project, and the port conceptual permit is not inconsistent with any total maximum daily load or basin management action plan adopted for the waterbody into which the system discharges or is located pursuant to s. 403.067(7) and department rules regarding total maximum daily loads; and

(b) Applications for proposed future phase activities under the port conceptual permit are consistent with the design and conditions of the issued port conceptual permit. Primary areas for consistency comparisons include the size, location, and extent of the system; type of activity; percent of imperviousness; allowable discharge and points of discharge; location and extent of wetland and other surface water impacts and, if required, a proposed mitigation plan; control elevations; extent of stormwater reuse; and detention or retention volumes. If an application for any subsequent phase activity is made that is not consistent with the terms and conditions of the port conceptual permit, the applicant may request a modification of the port conceptual permit to resolve the inconsistency or that the application be processed independent of the port conceptual permit.

(6) Notwithstanding any other provision of law, a port conceptual permit or associated construction permit, including any applicable sovereignty submerged lands authorization, may authorize advance mitigation for impacts expected as a result of the activities described in the port conceptual permit. Such advance mitigation shall be credited to offset the impacts of such activities when undertaken, to the extent that the advance mitigation is successful.

(7) Final agency action on a port conceptual sovereignty submerged lands authorization associated with a port conceptual permit may not be delegated by the Board of Trustees of the Internal Improvement Trust Fund. However, approval of such an authorization by the board shall constitute a delegation of authority to the department to take final agency action on behalf of the board on any sovereignty submerged lands authorization necessary to construct facilities included in the port conceptual sovereignty submerged lands authorization, unless a member of the board specifically requests that final agency action be brought before the board. Any delegation of authority to the department concerning a private project does not exempt the private project from applicable rules of the board, including lease and easement fees.

(8) Except as otherwise provided in this section, the following procedures apply to the approval or denial of an application for a port conceptual permit or a final permit or authorization:

(a) Applications for a port conceptual permit, including any request for the conceptual approval of the use of sovereignty submerged lands, shall be processed in accordance with the provisions of ss. 373.427 and 120.60, with the following exceptions:

1. An application for a port conceptual permit, and any applications for subsequent construction contained in a port conceptual permit, must be approved or denied within 60 days after receipt of a completed application.

2. The department may request additional information no more than twice, unless the applicant waives this limitation in writing. If the applicant does not provide a response to the second request for additional information within 90 days or another time period mutually agreed upon between the applicant and department, the application shall be considered withdrawn.

3. If the applicant believes that any request for additional information is not authorized by law or agency rule, the applicant may request an informal hearing pursuant to s. 120.57(2) before the Secretary of Environmental Protection to determine whether the application is complete.

4. If a third party petitions to challenge the issuance of a port conceptual permit by the department, the petitioner initiating the action has the burden of ultimate persuasion and, in the first instance, has the burden of going forward with the evidence.

(b) Upon issuance of the department's notice of intent to issue or deny a port conceptual permit, the applicant shall publish a one-time notice of such intent, prepared by the department, in the newspaper with the largest general circulation in the county or counties where the port is located.

(c) Final agency action on a port conceptual permit is subject to challenge pursuant to ss. 120.569 and 120.57. However, final agency action to authorize subsequent construction of facilities contained in a port conceptual permit may only be challenged by a third party for consistency with the port conceptual permit.

(d) A person who will be substantially affected by a final agency action described in paragraph (c) must initiate administrative proceedings pursuant to ss. 120.569 and 120.57 within 21 days after the publication of the notice of the proposed action. If administrative proceedings are requested, the proceedings are subject to the summary hearing provisions of s. 120.574. However, if the decision of the administrative law judge will be a recommended order rather than a final order, a summary proceeding must be conducted within 90 days after a party files a motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

(9) Notwithstanding any other provision of law, the department and the board are authorized to issue permits and authorizations pursuant to this section in advance of the issuance of any take authorization as provided for in the Endangered Species Act and its implementing regulations if the permits and authorizations include a condition requiring that authorized activities shall not commence until such take authorization is issued and shall be consistent with such authorization. The department shall unilaterally modify any permit or authorization issued pursuant to this section to make the permit or authorization consistent with any subsequently issued incidental take authorization. Such a unilateral modification does not create a point of entry for any substantially affected person to request administrative proceedings under ss. 120.569 and 120.57.

(10) In lieu of meeting the generally applicable stormwater design standards in rules adopted under this part, which create a presumption that stormwater discharged from the system will meet the applicable state water quality standards in the receiving waters, any port listed in s. 311.09(1) may propose alternative stormwater treatment and design criteria for the construction, operation, and maintenance of stormwater management systems serving overwater piers. The proposal shall include such structural components or best management practices to address the stormwater discharge from the pier, including consideration of activities conducted on the pier, as are necessary to provide reasonable assurance that stormwater discharged from the system will meet the applicable state water quality standards in the receiving waters.

(11) The department and the board may adopt rules to implement the provisions of this section under the joint coastal permit provisions of chapter 161, the sovereignty submerged lands provisions of chapter 253, and the environmental resource permit provisions of this part. The adoption of such rules is not subject to any special rulemaking requirements related to small business.

(12) This section shall take effect upon this act becoming a law, and its implementation may not be delayed by any rulemaking under this section.

History.—s. 1, ch. 2010-201; s. 7, ch. 2011-164.

373.4135 Mitigation banks and offsite regional mitigation.—

(1) The Legislature finds that the adverse impacts of activities regulated under this part may be offset by the creation, maintenance, and use of mitigation banks and offsite regional mitigation. Mitigation banks and offsite regional mitigation can enhance the certainty of mitigation and provide ecological value due to the improved likelihood of environmental success associated with their proper construction, maintenance, and management. Therefore, the department and the water management districts are directed to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation. Mitigation banks and offsite

regional mitigation should emphasize the restoration and enhancement of degraded ecosystems and the preservation of uplands and wetlands as intact ecosystems rather than alteration of landscapes to create wetlands. This is best accomplished through restoration of ecological communities that were historically present.

(a) The Legislature intends that the provisions for establishing mitigation banks apply equally to both public and private entities, except that the rules of the department and water management districts may set forth different measures governing financial responsibility, and different measures governing legal interest, needed to ensure the construction and perpetual protection of a mitigation bank.

(b) The Legislature recognizes the importance of mitigation banks as an appropriate and allowable mitigation alternative to permittee-responsible mitigation. However, the Legislature also recognizes that certain timing and geographical constraints could result in the unavailability of mitigation bank credits for a certain project upon completion of the project's application. If state and federal mitigation credits are not available to offset the adverse impacts of a project, a local government may allow permittee-responsible mitigation consisting of the restoration or enhancement of lands purchased and owned by a local government for conservation purposes, and such mitigation must conform to the permitting requirements of s. 373.4136. Except when a local government has allowed a public or private mitigation project to be created on land it has purchased for conservation purposes pursuant to this paragraph, a governmental entity may not create or provide mitigation for a project other than its own unless the governmental entity uses land that was not previously purchased for conservation and unless the governmental entity provides the same financial assurances as required for mitigation banks permitted under s. 373.4136. This paragraph does not apply to:

1. Mitigation banks permitted before December 31, 2011, under s. 373.4136;
2. Offsite regional mitigation areas established before December 31, 2011, under subsection (6) or, when credits are not available at a mitigation bank permitted under s. 373.4136, mitigation areas created by a local government which were awarded mitigation credits pursuant to the uniform mitigation assessment method as provided in chapter 62-345, Florida Administrative Code, under a permit issued before December 31, 2011;
3. Mitigation for transportation projects under ss. 373.4137 and 373.4139;
4. Mitigation for impacts from mining activities under s. 373.41492;
5. Mitigation provided for single-family lots or homeowners under subsection (7);
6. Entities authorized in chapter 98-492, Laws of Florida;
7. Mitigation provided for electric utility impacts certified under part II of chapter 403; or
8. Mitigation provided on sovereign submerged lands under subsection (6).

(c) It is the further intent of the Legislature that mitigation banks and offsite regional mitigation be considered appropriate and a permittable mitigation option under the conditions specified by the rules of the department and water management districts.

(d) Offsite mitigation, including offsite regional mitigation, may be located outside the regional watershed in which the adverse impacts of an activity regulated under this part are located, if such adverse impacts are offset by the offsite mitigation.

(e) The department or water management district may allow the use of a mitigation bank or offsite regional mitigation alone or in combination with other forms of mitigation to offset adverse impacts of activities regulated under this part.

(f) When an applicant for a permit under the provisions of this part other than this section and s. 373.4136 submits more than one mitigation proposal to the department or a water management district, the department or water management district shall, in evaluating each proposal, ensure that such proposal adequately offsets the adverse impacts.

(2) Local governments shall not deny the use of a mitigation bank or offsite regional mitigation due to its location outside of the jurisdiction of the local government.

(3) Nothing in this section or s. 373.4136 shall be construed to eliminate or diminish any of the regulatory requirements applicable to applicants seeking permits pursuant to other provisions of this part.

(4) Except as otherwise provided herein, nothing in this section or s. 373.4136 shall be construed to diminish or limit the existing authority of the department, water management districts, or local governments.

(5) Nothing in this section or s. 373.4136 shall be construed to limit the consideration of forms of mitigation other than mitigation banks and offsite regional mitigation.

(6) An environmental creation, preservation, enhancement, or restoration project, including regional offsite mitigation areas, for which money is donated or paid as mitigation, that is sponsored by the department, a water management district, or a local government and provides mitigation for five or more applicants for permits under this part, or for 35 or more acres of adverse impacts, shall be established and operated under a memorandum of agreement. The memorandum of agreement shall be between the governmental entity proposing the mitigation project and the department or water management district, as appropriate. Such memorandum of agreement need not be adopted by rule. For the purposes of this subsection, one creation, preservation, enhancement, or restoration project shall mean one or more parcels of land with similar ecological communities that are intended to be created, preserved, enhanced, or restored under a common scheme.

(a) For any ongoing creation, preservation, enhancement, or restoration project and regional offsite mitigation area sponsored by the department, a water management district, or a local government, for which money was or is paid as mitigation, that was begun prior to the effective date of this subsection and has operated as of the effective date of this subsection, or is anticipated to operate, in excess of the mitigation thresholds provided in this subsection, the governmental entity sponsoring such project shall submit a draft memorandum of agreement to the water management district or department by October 1, 2000. The governmental entity sponsoring such project shall make reasonable efforts to obtain the final signed memorandum of agreement within 1 year after such submittal. The governmental entity sponsoring such project may continue to receive moneys donated or paid toward the project as mitigation, provided the requirements of this paragraph are met.

(b) The memorandum of agreement shall establish criteria that each environmental creation, preservation, enhancement, or restoration project must meet. These criteria must address the elements listed in paragraph (c). The entity sponsoring such project, or category of projects, shall submit documentation or other evidence to the water management district or department that the project meets, or individual projects within a category meet, the specified criteria.

(c) At a minimum, the memorandum of agreement must address the following for each project authorized:

1. A description of the work that will be conducted on the site and a timeline for completion of such work.
2. A timeline for obtaining any required environmental resource permit.
3. The environmental success criteria that the project must achieve.
4. The monitoring and long-term management requirements that must be undertaken for the project.
5. An assessment of the project in accordance with s. 373.4136(4)(a)-(i), until the adoption of the uniform wetland mitigation assessment method pursuant to s. 373.414(18).
6. A designation of the entity responsible for the successful completion of the mitigation work.
7. A definition of the geographic area where the project may be used as mitigation established using the criteria of s. 373.4136(6).
8. Full cost accounting of the project, including annual review and adjustment.
9. Provision and a timetable for the acquisition of any lands necessary for the project.
10. Provision for preservation of the site.
11. Provision for application of all moneys received solely to the project for which they were collected.
12. Provision for termination of the agreement and cessation of use of the project as mitigation if any material contingency of the agreement has failed to occur.

(d) A single memorandum of understanding may authorize more than one environmental creation, preservation, enhancement, or restoration project, or category of projects, as long as the elements listed in paragraph (c) are addressed for each project.

(e) Projects governed by this subsection, except for projects established pursuant to subsection (7), shall be subject to the provisions of s. 373.414(1)(b)1.

(f) The provisions of this subsection shall not apply to mitigation areas established to implement the provisions of s. 373.4137.

(g) The provisions of this subsection shall not apply when the department, water management district, or local government establishes, or contracts with a private entity to establish, a mitigation bank permitted under s. 373.4136. The provisions of this subsection shall not apply to other entities that establish offsite regional mitigation as defined in this section and s. 373.403.

(7) The department, water management districts, and local governments may elect to establish and manage mitigation sites, including regional offsite mitigation areas, or contract with permitted mitigation banks, to provide mitigation options for private single-family lots or homeowners. The department, water management districts, and local governments shall provide a written notice of their election under this subsection by United States mail to those individuals who have requested, in writing, to receive such notice. The use of mitigation options established under this subsection are not subject to the full-cost-accounting provision of s. 373.414(1)(b)1. To use a mitigation option established under this subsection, the applicant for a permit under this part must be a private, single-family lot or homeowner, and the land upon which the adverse impact is located must be intended for use as a single-family residence by the current owner. The applicant must not be a corporation, partnership, or other business entity. However, the provisions of this subsection shall not apply to other entities that establish offsite regional mitigation as defined in this section and s. 373.403.

History.—s. 29, ch. 93-213; s. 6, ch. 96-371; s. 2, ch. 2000-133; s. 8, ch. 2001-62; s. 4, ch. 2012-174; s. 1, ch. 2019-110.

373.4136 Establishment and operation of mitigation banks.—

(1) MITIGATION BANK PERMITS.—The department and the water management districts may require permits to authorize the establishment and use of mitigation banks. A mitigation bank permit shall also constitute authorization to construct, alter, operate, maintain, abandon, or remove any surface water management system necessary to establish and operate the mitigation bank. To obtain a mitigation bank permit, the applicant must provide reasonable assurance that:

(a) The proposed mitigation bank will improve ecological conditions of the regional watershed;

(b) The proposed mitigation bank will provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;

(c) The proposed mitigation bank will be effectively managed in perpetuity;

(d) The proposed mitigation bank will not destroy areas with high ecological value;

(e) The proposed mitigation bank will achieve mitigation success;

(f) The proposed mitigation bank will be adjacent to lands that will not adversely affect the perpetual viability of the mitigation bank due to unsuitable land uses or conditions;

(g) Any surface water management system to be constructed, altered, operated, maintained, abandoned, or removed within the mitigation bank will meet the requirements of this part and the rules adopted thereunder;

(h) It has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and

(i) It can meet the financial responsibility requirements prescribed for mitigation banks.

(2) MITIGATION BANK PHASES.—A mitigation bank may be established and operated in phases if each phase independently meets the requirements for the establishment and operation of a mitigation bank. The number of mitigation credits assigned to a phase of a mitigation bank may be less than would be assigned to that phase upon completion of all phases of the mitigation bank. In such case, the department or water management districts shall increase the number of mitigation credits awarded to subsequent phases of the mitigation bank.

(3) ADDITION OF LANDS.—The department or water management district shall authorize the addition of land to a permitted mitigation bank when it is appropriate to do so and the addition of the land results in an increase in the ecological value of the existing mitigation bank. Any such addition shall be accomplished through a modification to the permit which reflects the corresponding increase in the total number of mitigation credits assigned to the bank.

(4) MITIGATION CREDITS.—After evaluating the information submitted by the applicant for a mitigation bank permit and assessing the proposed mitigation bank pursuant to the criteria in this section, the department or water management district shall award a number of mitigation credits to a proposed mitigation bank or phase of such mitigation bank. An entity establishing and operating a mitigation bank may apply to modify the mitigation bank

permit to seek the award of additional mitigation credits if the mitigation bank results in an additional increase in ecological value over the value contemplated at the time of the original permit issuance, or the most recent modification thereto involving the number of credits awarded. The number of credits awarded shall be based on the degree of improvement in ecological value expected to result from the establishment and operation of the mitigation bank as determined using a functional assessment methodology. In determining the degree of improvement in ecological value, each of the following factors, at a minimum, shall be evaluated:

(a) The extent to which target hydrologic regimes can be achieved and maintained.

(b) The extent to which management activities promote natural ecological conditions, such as natural fire patterns.

(c) The proximity of the mitigation bank to areas with regionally significant ecological resources or habitats, such as national or state parks, Outstanding National Resource Waters and associated watersheds, Outstanding Florida Waters and associated watersheds, and lands acquired through governmental or nonprofit land acquisition programs for environmental conservation; and the extent to which the mitigation bank establishes corridors for fish, wildlife, or listed species to those resources or habitats.

(d) The quality and quantity of wetland or upland restoration, enhancement, preservation, or creation.

(e) The ecological and hydrological relationship between wetlands and uplands in the mitigation bank.

(f) The extent to which the mitigation bank provides habitat for fish and wildlife, especially habitat for species listed as threatened, endangered, or of special concern, or provides habitats that are unique for that mitigation service area.

(g) The extent to which the lands that are to be preserved are already protected by existing state, local, or federal regulations or land use restrictions.

(h) The extent to which lands to be preserved would be adversely affected if they were not preserved.

(i) Any special designation or classification of the affected waters and lands.

(5) SCHEDULE FOR CREDIT RELEASE.—After awarding mitigation credits to a mitigation bank, the department or the water management district shall set forth a schedule for the release of those credits in the mitigation bank permit. A mitigation credit that has been released may be sold or used to offset adverse impacts from an activity regulated under this part.

(a) The department or the water management district shall allow a portion of the mitigation credits awarded to a mitigation bank to be released for sale or use prior to meeting all of the performance criteria specified in the mitigation bank permit. The department or the water management district shall allow release of all of a mitigation bank's awarded mitigation credits only after the bank meets the mitigation success criteria specified in the permit.

(b) The number of credits and schedule for release shall be determined by the department or water management district based upon the performance criteria for the mitigation bank and the success criteria for each mitigation activity. The release schedule for a specific mitigation bank or phase thereof shall be related to the actions required to implement the bank, such as site protection, site preparation, earthwork, removal of wastes, planting, removal or control of nuisance and exotic species, installation of structures, and annual monitoring and management requirements for success. In determining the specific release schedule for a bank, the department or water management district shall consider, at a minimum, the following factors:

1. Whether the mitigation consists solely of preservation or includes other types of mitigation.
2. The length of time anticipated to be required before a determination of success can be achieved.
3. The ecological value to be gained from each action required to implement the bank.
4. The financial expenditure required for each action to implement the bank.

(c) Notwithstanding the provisions of this subsection, no credit shall be released for freshwater wetland creation until the success criteria included in the mitigation bank permit are met.

(d) The withdrawal of mitigation credits from a mitigation bank shall be accomplished as a minor modification of the mitigation bank permit. A processing fee shall not be required by the department or water management district for this minor modification.

(6) MITIGATION SERVICE AREA.—The department or water management district shall establish a mitigation service area for each mitigation bank permit. The department or water management district shall notify and consider comments received on the proposed mitigation service area from each local government within the proposed

mitigation service area. Except as provided herein, mitigation credits may be withdrawn and used only to offset adverse impacts in the mitigation service area. The boundaries of the mitigation service area shall depend upon the geographic area where the mitigation bank could reasonably be expected to offset adverse impacts. Mitigation service areas may overlap, and mitigation service areas for two or more mitigation banks may be approved for a regional watershed.

(a) In determining the boundaries of the mitigation service area, the department or the water management district shall consider the characteristics, size, and location of the mitigation bank and, at a minimum, the extent to which the mitigation bank:

1. Contributes to a regional integrated ecological network;

2. Will significantly enhance the water quality or restoration of an offsite receiving water body that is designated as an Outstanding Florida Water, a Wild and Scenic River, an aquatic preserve, a water body designated in a plan approved pursuant to the Surface Water Improvement and Management Act, or a nationally designated estuarine preserve;

3. Will provide for the long-term viability of endangered or threatened species or species of special concern;

4. Is consistent with the objectives of a regional management plan adopted or endorsed by the department or water management districts; and

5. Can reasonably be expected to offset specific types of wetland impacts within a specific geographic area. A mitigation bank need not be able to offset all expected impacts within its service area.

(b) The department and water management districts shall use regional watersheds to guide the establishment of mitigation service areas. Drainage basins established pursuant to s. 373.414(8) may be used as regional watersheds when they are established based on the hydrological or ecological characteristics of the basin. A mitigation service area may extend beyond the regional watershed in which the bank is located into all or part of other regional watersheds when the mitigation bank has the ability to offset adverse impacts outside that regional watershed. Similarly, a mitigation service area may be smaller than the regional watershed in which the mitigation bank is located when adverse impacts throughout the regional watershed cannot reasonably be expected to be offset by the mitigation bank because of local ecological or hydrological conditions.

(c) Once a mitigation bank service area has been established by the department or a water management district for a mitigation bank, such service area shall be accepted by all water management districts, local governments, and the department.

(d) If the requirements in s. 373.414(1)(b) and (8) are met, the following projects or activities regulated under this part shall be eligible to use a mitigation bank, regardless of whether they are located within the mitigation service area:

1. Projects with adverse impacts partially located within the mitigation service area.

2. Linear projects, such as roadways, transmission lines, distribution lines, pipelines, railways, or seaports listed in s. 311.09(1).

3. Projects with total adverse impacts of less than 1 acre in size.

(7) ACCOUNTING.—The department or the water management district shall provide for the accounting of the award, release, and use of mitigation credits from a mitigation bank.

(8) AUTHORITY OF LOCAL GOVERNMENTS.—Local governments may not require permits or otherwise impose regulations governing the operation of a mitigation bank. However, this section shall not be construed to limit the authority of a local government to require an applicant for a mitigation bank to obtain any authorization required by a local ordinance for the construction activities associated with a mitigation bank.

(9) PRIOR APPLICATIONS.—An application for a mitigation bank conceptual approval or mitigation bank permit which is pending with, and determined complete by, the department or a water management district on or before the effective date of this act, or a mitigation bank conceptual approval or mitigation bank permit issued on or before the effective date of this act, shall continue to be subject to the rules adopted pursuant to s. 373.4135 which were in effect on the effective date of this act, unless the applicant or permittee elects to be subject to the rules governing mitigation banks adopted after that date.

(10) MODIFICATION WITH RESPECT TO PRIOR APPLICATIONS.—Any application for a modification of a mitigation bank conceptual approval or mitigation bank permit which was pending with, and determined complete by, the department or water management district on or before the effective date of this act, shall continue to be subject to the rules adopted pursuant to s. 373.4135 in effect on the effective date of this act, unless the permittee elects to be subject to the rules governing mitigation banks adopted after that date. Any modification to a mitigation bank conceptual approval or mitigation bank permit issued on or before the effective date of this act, which is applied for within 20 years of the effective date of this act, and which does not involve the addition of new land that was not previously included in the mitigation bank conceptual approval or mitigation bank permit, shall be subject to the rules adopted pursuant to s. 373.4135 which were in effect before the effective date of this act, unless the permittee elects to be subject to the rules governing mitigation banks adopted after that date.

(11) RULES.—The department and water management district may adopt rules to implement the provisions of s. 373.4135 and this section, which shall include, but not be limited to, provisions:

(a) Requiring financial responsibility for the construction, operation, and long-term management of a mitigation bank;

(b) For the perpetual protection and management of mitigation banks; and

(c) Establishing a system and methodology for the valuation, assessment, and award of mitigation credits.

History.—s. 7, ch. 96-371; s. 3, ch. 2000-133; s. 9, ch. 2003-265; s. 5, ch. 2012-174.

373.4137 Mitigation requirements for specified transportation projects.—

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by the use of mitigation banks and any other mitigation options that satisfy state and federal requirements in a manner that promotes efficiency, timeliness in project delivery, and cost-effectiveness.

(2) Environmental impact inventories for transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 shall be developed as follows:

(a) By July 1 of each year, the Department of Transportation, or a transportation authority established pursuant to chapter 348 or chapter 349 which chooses to participate in the program, shall submit to the water management districts a list of its projects in the adopted work program and an environmental impact inventory of habitat impacts and the anticipated mitigation needed to offset impacts as described in paragraph (b). The environmental impact inventory must be based on the rules adopted pursuant to this part, s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, and the Department of Transportation's plan of construction for transportation projects in the next 3 years of the tentative work program. The Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 may also include in its environmental impact inventory the habitat impacts and the anticipated amount of mitigation needed for any future transportation project. The Department of Transportation and each transportation authority established pursuant to chapter 348 or chapter 349 may fund any mitigation activities for future projects using current year funds.

(b) The environmental impact inventory must include a description of habitat impacts, including location, acreage, and type; the anticipated mitigation needed based on the functional loss as determined through the uniform mitigation assessment method adopted by the Department of Environmental Protection by rule pursuant to s. 373.414(18); identification of the proposed mitigation option; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list of threatened species, endangered species, and species of special concern affected by the proposed project.

(c) Before projects are identified for inclusion in a water management district mitigation plan as described in subsection (4), the Department of Transportation must consider using credits from a permitted mitigation bank. The Department of Transportation must consider the availability of suitable and sufficient mitigation bank credits within the transportation project's area, the ability to satisfy commitments to regulatory and resource agencies, the

availability of suitable and sufficient mitigation purchased or developed under this section, the ability to complete suitable existing water management district or Department of Environmental Protection mitigation sites initiated with Department of Transportation mitigation funds, and the ability to satisfy state and federal requirements, including long-term maintenance and liability.

(3)(a) To implement the mitigation option identified in the environmental impact inventory described in subsection (2), the Department of Transportation may purchase credits for current and future use directly from a mitigation bank, purchase mitigation services through the water management districts or the Department of Environmental Protection, conduct its own mitigation, or use other mitigation options that meet state and federal requirements. Funding for the identified mitigation option as described in the environmental impact inventory must be included in the Department of Transportation's work program developed pursuant to s. 339.135. The amount programmed each year by the Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 must correspond to an estimated cost to mitigate for the functional loss identified in the environmental impact inventory described in subsection (2).

(b) Each transportation authority established pursuant to chapter 348 or chapter 349 which chooses to participate in this program shall create an escrow account within its financial structure and deposit funds in the account to pay for the environmental mitigation phase of projects budgeted for the current fiscal year. The escrow account shall be maintained by the authority for the benefit of the water management districts. Any interest earnings from the escrow account must remain with the authority.

(c) For mitigation implemented by the water management district or the Department of Environmental Protection, as appropriate, the amount paid each year must be based on mitigation services provided by the water management districts or the Department of Environmental Protection pursuant to an approved water management district mitigation plan, as described in subsection (4). The water management districts or the Department of Environmental Protection, as appropriate, may request payment no sooner than 30 days before the date the funds are needed to pay for activities associated with development or implementation of permitted mitigation that meets the requirements of this part, 33 U.S.C. s. 1344, and 33 C.F.R. part 332, in the approved water management district mitigation plan described in subsection (4) for the current fiscal year. The projected amount of mitigation shall be reconciled each quarter with the actual amount of mitigation needed for projects as permitted, including permit modifications, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The subject year's programming of funds shall be adjusted to reflect the mitigation as permitted. If the water management district excludes a project from an approved water management district mitigation plan, if the water management district cannot timely permit a mitigation site to offset the impacts of a Department of Transportation project identified in the environmental impact inventory, or if the proposed mitigation does not meet state and federal requirements, the Department of Transportation may use the associated funds for the purchase of mitigation bank credits or any other mitigation option that satisfies state and federal requirements. Upon final payment for mitigation of a transportation project as permitted, the obligation of the Department of Transportation or the participating transportation authority is satisfied, and the water management district or the Department of Environmental Protection, as appropriate, has continuing responsibility for the mitigation project.

(d) Beginning with the March 2015 water management district mitigation plans, each water management district or the Department of Environmental Protection, as appropriate, shall invoice the Department of Transportation for mitigation services to offset only the impacts of a Department of Transportation project identified in the environmental impact inventory, including planning, design, construction, maintenance and monitoring, and other costs necessary to meet the requirements of this section, 33 U.S.C. s. 1344, and 33 C.F.R. part 332. If the water management district identifies the use of mitigation bank credits to offset a Department of Transportation impact, the water management district shall exclude that purchase from the mitigation plan, and the Department of Transportation shall purchase the bank credits.

(e) For mitigation activities occurring on existing water management district or Department of Environmental Protection mitigation sites initiated with Department of Transportation mitigation funds before July 1, 2013, the water management district or the Department of Environmental Protection, as appropriate, shall invoice the Department of Transportation or a participating transportation authority at a cost per acre of $75,000 multiplied by the projected acres

of impact as identified in the environmental impact inventory. The cost per acre must be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. When implementing the mitigation activities necessary to offset the permitted impacts as provided in the approved mitigation plan, the water management district shall maintain records of the costs incurred in implementing the mitigation. The records must include, but are not limited to, costs for planning, land acquisition, design, construction, staff support, long-term maintenance and monitoring of the mitigation site, and other costs necessary to meet the requirements of 33 U.S.C. s. 1344 and 33 C.F.R. part 332.

(4) Before March 1 of each year, each water management district shall develop a mitigation plan to offset only the impacts of transportation projects in the environmental impact inventory for which a water management district is implementing mitigation that meets the requirements of this section, 33 U.S.C. s. 1344, and 33 C.F.R. part 332. The water management district mitigation plan must be developed in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, participating transportation authorities established pursuant to chapter 348 or chapter 349, other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks. In developing such plans, the water management districts shall use sound ecosystem management practices to address significant water resource needs and consider activities of the Department of Environmental Protection and the water management districts, such as surface water improvement and management (SWIM) projects and lands identified for potential acquisition for preservation, restoration, or enhancement, and the control of invasive and exotic plants in wetlands and other surface waters, to the extent that the activities comply with the mitigation requirements adopted under this part, 33 U.S.C. s. 1344, and 33 C.F.R. part 332. The water management district mitigation plan must identify each site where the water management district will mitigate for a transportation project. For each mitigation site, the water management district shall provide the scope of the mitigation services; provide the functional gain as determined through the uniform mitigation assessment method adopted by the Department of Environmental Protection by rule pursuant to s. 373.414(18); describe how the mitigation offsets the impacts of each transportation project as permitted; and provide a schedule for the mitigation services. The water management districts shall maintain records of costs incurred and payments received for providing these services. Records must include, but are not limited to, planning, land acquisition, design, construction, staff support, long-term maintenance and monitoring of the mitigation site, and other costs necessary to meet the requirements of 33 U.S.C. s. 1344 and 33 C.F.R. part 332. To the extent moneys paid to a water management district by the Department of Transportation or a participating transportation authority are greater than the amount spent by the water management districts in providing the mitigation services to offset the permitted transportation project impacts, these moneys must be refunded to the Department of Transportation or participating transportation authority. The mitigation plan shall be submitted to the water management district governing board or its designee for review and approval. At least 14 days before approval by the governing board, the water management district shall provide a copy of the draft mitigation plan to the Department of Environmental Protection and any person who has requested a copy. Subsequent to the governing board approval, the mitigation plan shall be submitted to the Department of Environmental Protection for approval. The plan may not be implemented until it is submitted to, and approved in part or in its entirety by, the Department of Environmental Protection.

(a) Specific projects may be excluded from the mitigation plan, in whole or in part, and are not subject to this section upon the election of the Department of Transportation, a transportation authority if applicable, or the appropriate water management district. The Department of Transportation or a participating transportation authority may not exclude a transportation project from the mitigation plan if mitigation is scheduled for implementation by the water management district in the current fiscal year unless the transportation project is removed from the Department of Transportation's work program or transportation authority funding plan, the mitigation cannot be timely permitted to offset the impacts of a Department of Transportation project identified in the environmental impact inventory, or the proposed mitigation does not meet state and federal requirements. If a project is removed from the work program or the mitigation plan, costs spent by the water management district before removal are eligible for reimbursement by the Department of Transportation or participating transportation authority.

(b) When determining which projects to include in or exclude from the mitigation plan, the Department of Transportation shall investigate using credits from a permitted mitigation bank before those projects are submitted for inclusion in a water management district mitigation plan. The Department of Transportation shall exclude a project from the mitigation plan if the investigation undertaken pursuant to this paragraph results in the conclusion that the use of credits from a permitted mitigation bank promotes efficiency, timeliness in project delivery, cost-effectiveness, and transfer of liability for success and long-term maintenance.

(5) The water management district shall ensure that mitigation requirements pursuant to 33 U.S.C. s. 1344 and 33 C.F.R. part 332 are met for the impacts identified in the environmental impact inventory for which the water management district will implement mitigation described in subsection (2), by implementation of the approved mitigation plan described in subsection (4) to the extent funding is provided by the Department of Transportation, or a transportation authority established pursuant to chapter 348 or chapter 349, if applicable. In developing and implementing the mitigation plan, the water management district shall comply with federal permitting requirements pursuant to 33 U.S.C. s. 1344 and 33 C.F.R. part 332. During the federal permitting process, the water management district may deviate from the approved mitigation plan in order to comply with federal permitting requirements upon notice and coordination with the Department of Transportation or participating transportation authority.

(6) The water management district mitigation plans shall be updated annually to reflect the most current Department of Transportation work program and project list of a transportation authority established pursuant to chapter 348 or chapter 349, if applicable, and may be amended throughout the year to anticipate schedule changes or additional projects that may arise. Before amending the mitigation plan to include new projects, the Department of Transportation must consider mitigation banks and other available mitigation options that meet state and federal requirements. Each update and amendment of the mitigation plan shall be submitted to the governing board of the water management district or its designee for approval. However, such approval shall not apply to a deviation as described in subsection (5).

(7) Upon approval by the governing board of the water management district and the Department of Environmental Protection, the mitigation plan shall satisfy the mitigation requirements under this part for impacts specifically identified in the environmental impact inventory described in subsection (2) and any other mitigation requirements imposed by local, regional, and state agencies for these same impacts. The approval of the governing board of the water management district and the Department of Environmental Protection authorizes the activities proposed in the mitigation plan, and no other state, regional, or local permit or approval is necessary.

(8) This section does not eliminate the need for the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 to comply with the requirement to implement practicable design modifications, including realignment of transportation projects, to reduce or eliminate the impacts of its transportation projects on wetlands and other surface waters as required by rules adopted pursuant to this part, or to diminish the authority under this part to regulate other impacts, including water quantity or water quality impacts, or impacts regulated under this part which are not identified in the environmental impact inventory described in subsection (2).

History.—s. 1, ch. 96-238; s. 36, ch. 99-385; s. 1, ch. 2000-261; s. 93, ch. 2002-20; s. 39, ch. 2004-269; s. 30, ch. 2005-71; s. 12, ch. 2005-281; s. 1, ch. 2009-11; s. 3, ch. 2012-174; s. 22, ch. 2014-223; s. 5, ch. 2016-11.

373.4138 High Speed Rail Project; determination of mitigation requirements and costs.—With respect to the High Speed Rail Project, any mitigation requirements and associated costs shall be determined by negotiation between the Department of Environmental Protection and the Department of Transportation, but if agreement on mitigation costs cannot be reached, the project may proceed at the rates determined under s. 373.4137(3).

History.—s. 5, ch. 96-238.

373.4139 Local government transportation infrastructure mitigation requirements.—

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed as part of a coordinated multijurisdiction initiative undertaken with substantial funding from a discretionary sales surtax levied under s. 212.055 may be more effectively achieved by long-range mitigation planning by a responsible government rather than on a case-by-case basis.

(2) As used in this section, the county levying the surtax must be the government responsible for developing, permitting, and implementing the long-range mitigation plans, unless the county chooses not to be the responsible government and a responsible government is otherwise designated by an interlocal agreement executed by and between all local governments participating in the transportation initiative. This environmental mitigation process is not mandatory but may be initiated by the county levying the discretionary sales surtax, upon notice to the appropriate water management districts.

(3) The responsible government must develop its long-range mitigation plan for multijurisdictional transportation initiatives as follows:

(a) By May 1 of each year of the transportation initiative, the participating governments shall prepare an inventory of all wetland and surface water resources, subject to this part and 33 U.S.C. s. 1344, which may be impacted in the next 3 years of the participating government's plan of construction for each transportation project and shall submit the environmental inventory to the responsible government. The environmental inventory shall include the information required in s. 373.4137(2)(b).

(b) Upon receipt of the environmental inventory, the responsible government shall develop a mitigation plan in consultation with the other participating governments, as well as with the appropriate water management districts, the United States Army Corps of Engineers, and other appropriate federal and state governments. The responsible government shall submit the mitigation plan to the water management districts having jurisdiction over the mitigation or impact areas.

(c) The water management district having jurisdiction over the impact area shall review the mitigation plan for compliance with rules adopted pursuant to this part. When more than one water management district has responsibility for regulation of the transportation initiative, the water management districts shall enter into an agreement pursuant to s. 373.046(6) to designate a single water management district to review and approve the mitigation plan.

(d) The responsible government shall submit the mitigation plan to all appropriate federal agencies that require permitting or approval of wetland and surface water mitigation. The responsible government shall seek to obtain formal approval of the mitigation plan from the federal agencies.

(e) Specific transportation projects may be excluded from the mitigation plan and shall not be subject to this section upon agreement by the responsible government and the participating governments if the inclusion of the project would hamper the efficiency and timeliness of the mitigation planning and permitting process or the responsible government is unable to identify mitigation that would offset the impacts of the project.

(4) Upon the water management district's approval, the mitigation plan shall be deemed to satisfy the mitigation requirements under this part and any other mitigation requirements imposed by local, regional, and state agencies for impacts identified in the environmental inventory. The approval of the appropriate water management district authorizes the environmental mitigation activities proposed in the mitigation plan, and no additional state, regional, or local permit or approval is necessary.

(5)(a) Concurrent with, or subsequent to, the approval of the mitigation plan, the participating governments shall make any necessary permit applications to the appropriate water management district that will be solely responsible for review and final action on the application required by this chapter. The responsible government must ensure that mitigation requirements specified by 33 U.S.C. s. 1344 are met for the impacts identified in the wetland inventory by implementing the mitigation plan approved by the water management district to the extent that the funding is provided by the participating governments.

(b) This section does not eliminate the need for the participating governments to comply with requirements to implement practicable design modifications, including realignment of transportation projects, to reduce or eliminate impacts of the transportation projects on wetlands and other surface waters as required by rules adopted pursuant to this part.

(6) To fund the long-range mitigation plan, the responsible government shall create an escrow account. The participating governments shall deposit funds into the account to pay for the environmental mitigation phase of projects budgeted for the current fiscal year. The responsible government shall maintain the escrow account for mitigation purposes only. Any interest earned from the escrow account may be used to offset the cost of the mitigation

plan and must be credited to the participating governments' transportation projects. The responsible government shall reimburse the water management district the actual costs it incurs in reviewing the mitigation plan.

(7) The mitigation plans shall be updated annually to reflect the most current plan of construction of the participating governments and may be amended throughout the year to anticipate schedule changes or additional projects that may arise.

History.—s. 5, ch. 2003-409.

373.414 Additional criteria for activities in surface waters and wetlands.—

(1) As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall objectives of the district, the governing board or the department shall require the applicant to provide reasonable assurance that state water quality standards applicable to waters as defined in s. 403.031(13) will not be violated and reasonable assurance that such activity in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), is not contrary to the public interest. However, if such an activity significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest.

(a) In determining whether an activity, which is in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), and is regulated under this part, is not contrary to the public interest or is clearly in the public interest, the governing board or the department shall consider and balance the following criteria:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activity will be of a temporary or permanent nature;
6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and
7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

(b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the governing board or the department, in deciding to grant or deny a permit, shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects that may be caused by the regulated activity. Such measures may include, but are not limited to, onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks permitted under s. 373.4136. It shall be the responsibility of the applicant to choose the form of mitigation. The mitigation must offset the adverse effects caused by the regulated activity.

1. The department or water management districts may accept the donation of money as mitigation only where the donation is specified for use in a duly noticed environmental creation, preservation, enhancement, or restoration project, endorsed by the department or the governing board of the water management district, which offsets the impacts of the activity permitted under this part. However, the provisions of this subsection shall not apply to projects undertaken pursuant to s. 373.4137 or chapter 378. Where a permit is required under this part to implement any project endorsed by the department or a water management district, all necessary permits must have been issued prior to the acceptance of any cash donation. After the effective date of this act, when money is donated to either the department or a water management district to offset impacts authorized by a permit under this part, the department or the water management district shall accept only a donation that represents the full cost to the department or water management district of undertaking the project that is intended to mitigate the adverse impacts. The full cost shall include all direct and indirect costs, as applicable, such as those for land acquisition, land restoration or enhancement, perpetual land management, and general overhead consisting of costs such as staff time, building, and vehicles. The department or the water management district may use a multiplier or percentage to add to other direct or indirect costs to estimate general overhead. Mitigation credit for such a donation shall be given only to the extent that the

donation covers the full cost to the agency of undertaking the project that is intended to mitigate the adverse impacts. However, nothing herein shall be construed to prevent the department or a water management district from accepting a donation representing a portion of a larger project, provided that the donation covers the full cost of that portion and mitigation credit is given only for that portion. The department or water management district may deviate from the full cost requirements of this subparagraph to resolve a proceeding brought pursuant to chapter 70 or a claim for inverse condemnation. Nothing in this section shall be construed to require the owner of a private mitigation bank, permitted under s. 373.4136, to include the full cost of a mitigation credit in the price of the credit to a purchaser of said credit.

2. The department and each water management district shall report by March 1 of each year, as part of the consolidated annual report required by s. 373.036(7), all cash donations accepted under subparagraph 1. during the preceding water management district fiscal year for wetland mitigation purposes. The report shall exclude those contributions pursuant to s. 373.4137. The report shall include a description of the endorsed mitigation projects and, except for projects governed by s. 373.4135(6), shall address, as applicable, success criteria, project implementation status and timeframe, monitoring, long-term management, provisions for preservation, and full cost accounting.

3. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.

4. If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with mitigation requirements approved under a permit for the same activity issued under this part, including application of the uniform wetland mitigation assessment method adopted pursuant to subsection (18), the mitigation requirements for surface water and wetland impacts shall be controlled by the permit issued under this part.

(c) Where activities for a single project regulated under this part occur in more than one local government jurisdiction, and where permit conditions or regulatory requirements are imposed by a local government for these activities which cannot be reconciled with those imposed by a permit under this part for the same activities, the permit conditions or regulatory requirements shall be controlled by the permit issued under this part.

(2) The governing board or the department is authorized to establish by rule specific permitting criteria in addition to the other criteria in this part which provides:

(a) One or more size thresholds of isolated wetlands below which impacts on fish and wildlife and their habitats will not be considered. These thresholds shall be based on biological and hydrological evidence that shows the fish and wildlife values of such areas to be minimal.

(b) Criteria for the protection of threatened and endangered species in isolated wetlands regardless of size and land use.

(3) It is the intent of the Legislature to provide for the use of certain wetlands as a natural means of stormwater management and to incorporate these waters into comprehensive stormwater management when such use is compatible with the ecological characteristics of such waters and with sound resource management. To accomplish this, the governing board or the department is authorized to establish by rule performance standards for the issuance of permits for the use of certain wetlands for stormwater management. The compliance with such standards creates a presumption that the discharge from the stormwater management system meets state water quality standards.

(4) It is the intent of the Legislature to provide for the use of certain wetlands to receive and treat domestic wastewater that at a minimum has been treated to secondary standards. The department may by rule establish criteria for this activity, which criteria protect the type, nature, and function of the wetlands receiving the wastewater.

(5)(a) It is the intent of the Legislature to protect estuaries and lagoons from the damage created by construction of vertical seawalls and to encourage construction of environmentally desirable shore protection systems, such as riprap and gently sloping shorelines which are planted with suitable aquatic and wetland vegetation.

(b) No permit under this part to create a vertical seawall may be issued by the governing board or the department unless one of the following conditions exists:

1. The proposed construction is located within a port as defined in s. 315.02 or s. 403.021;

2. The proposed construction is necessary for the creation of a marina, the vertical seawalls are necessary to provide access to watercraft, or the proposed construction is necessary for public facilities;

3. The proposed construction is located within an existing manmade canal and the shoreline of such canal is currently occupied in whole or in part by vertical seawalls; or

4. The proposed construction is to be conducted by a public utility when such utility is acting in the performance of its obligation to provide service to the public.

(c) When considering an application for a permit to repair or replace an existing vertical seawall, the governing board or the department shall generally require such seawall to be faced with riprap material, or to be replaced entirely with riprap material unless a condition specified in paragraph (b) exists.

(d) This subsection shall in no way hinder any activity previously exempt or permitted or those activities permitted pursuant to chapter 161.

(6)(a) The Legislature recognizes that some mining activities that may occur in waters of the state must leave a deep pit as part of the reclamation. Such deep pits may not meet the established water quality standard for dissolved oxygen below the surficial layers. Where such mining activities otherwise meet the permitting criteria contained in this section, such activities may be eligible for a variance from the established water quality standard for dissolved oxygen within the lower layers of the reclaimed pit.

(b) Wetlands reclamation activities for phosphate and heavy minerals mining undertaken pursuant to chapter 378 shall be considered appropriate mitigation for this part if they maintain or improve the water quality and the function of the biological systems present at the site prior to the commencement of mining activities.

(c) Wetlands reclamation activities for fuller's earth mining undertaken pursuant to chapter 378 shall be considered appropriate mitigation for this part if they maintain or improve the water quality and the function of the biological systems present at the site prior to the commencement of mining activities, unless the site features make such reclamation impracticable, in which case the reclamation must offset the regulated activities' adverse impacts on surface waters and wetlands.

(d) Onsite reclamation of the mine pit for limerock and sand mining shall be conducted in accordance with the requirements of chapter 378.

1. Mitigation activities for limerock and sand mining must offset the regulated activities' adverse impacts on surface waters and wetlands. Mitigation activities shall be located on site, unless onsite mitigation activities are not feasible, in which case, offsite mitigation as close to the activities as possible shall be required. However, mitigation banking may be an acceptable form of mitigation, whether on or off site, as judged on a case-by-case basis.

2. The ratio of mitigation-to-wetlands loss shall be determined on a case-by-case basis and shall be based on the quality of the wetland to be impacted and the type of mitigation proposed.

(e) The Legislature recognizes that the state's horticultural industry contributes to the economic strength of Florida and that high-quality peat is a limited resource that is an important component of horticultural production. The Legislature further recognizes that obtaining high-quality peat typically and uniquely requires the mining of wetlands and other surface waters and that the use of recycled and renewable material to replace or reduce the use of natural peat is necessary for the future of the horticultural industry.

1. As used in this paragraph, the term:

a. "High-quality peat" means peat from a freshwater herbaceous wetland that grades H1 to H4 on the von Post Humification Scale and has a pH less than 7.

b. "Horticultural industry" means the industry that cultivates plants, including, but not limited to, trees, shrubs, flowers, annuals, perennials, tropical foliage, liners, ferns, vines, bulbs, grafts, scions, or buds, but excludes turf grasses grown or kept for or capable of propagation or distribution for retail, wholesale, or rewholesale purposes.

2. The department shall develop rules for permitting and mitigation of peat mines in herbaceous or historically herbaceous wetlands where high-quality peat is extracted predominately for use in the horticultural industry provided:

a. The permitting and mitigation rules shall be applicable where no less than 80 percent of the extracted peat is high-quality peat and 80 percent of the high-quality peat is used by the horticultural industry in products that incorporate other renewable or recycled materials to replace or reduce the use of natural peat;

b. No extraction is occurring in the underlying sand or rock strata;

c. No portion of the extraction or mitigation area is part of an existing or proposed larger plan of development; and

d. No portion of the mine is located in a body of water designated as Outstanding Florida Waters.

3. In adopting rules as directed in subparagraph 2., design modifications shall not be required to reduce or eliminate adverse impacts to herbaceous wetlands that score below a specific value, as provided by rule using the uniform mitigation assessment method of evaluation, except to require that the project meet water quality standards, not cause adverse offsite flooding, not adversely impact significant historical and archaeological resources pursuant to s. 267.061, and not cause adverse impacts to listed species or their habitats. In assessing mitigation for mines that are not required to reduce or eliminate adverse impacts, retaining a percentage of the reclaimed wetland as open water shall be deemed appropriate wetland mitigation. The rules must establish the amount of open water allowable as mitigation based upon a consideration of the type and amount of other wetland mitigation proposed, the value of those wetlands as evaluated using the uniform mitigation assessment method, and the amount of preservation of wetlands. The amount of open water shall not exceed 60 percent of the premining wetlands within the extracted area.

4. Rule 62-345.600, Florida Administrative Code, shall not be applied to mitigation for mines qualifying under this paragraph.

5. The department shall initiate rulemaking within 90 days after July 1, 2007, and water management districts may implement the proposed rules without adoption pursuant to s. 120.54.

(7) This section shall not be construed to diminish the jurisdiction or authority granted prior to the effective date of this act to the water management districts or the department pursuant to this part, including their jurisdiction and authority over isolated wetlands. The provisions of this section shall be deemed supplemental to the existing jurisdiction and authority under this part.

(8)(a) The governing board or the department, in deciding whether to grant or deny a permit for an activity regulated under this part shall consider the cumulative impacts upon surface water and wetlands, as delineated in s. 373.421(1), within the same drainage basin as defined in s. 373.403(9), of:

1. The activity for which the permit is sought.

2. Projects which are existing or activities regulated under this part which are under construction or projects for which permits or determinations pursuant to s. 373.421 or ~~1~~s. 403.914 have been sought.

3. Activities which are under review, approved, or vested pursuant to s. 380.06, or other activities regulated under this part which may reasonably be expected to be located within surface waters or wetlands, as delineated in s. 373.421(1), in the same drainage basin as defined in s. 373.403(9), based upon the comprehensive plans, adopted pursuant to chapter 163, of the local governments having jurisdiction over the activities, or applicable land use restrictions and regulations.

(b) If an applicant proposes mitigation within the same drainage basin as the adverse impacts to be mitigated, and if the mitigation offsets these adverse impacts, the governing board and department shall consider the regulated activity to meet the cumulative impact requirements of paragraph (a). However, this paragraph may not be construed to prohibit mitigation outside the drainage basin which offsets the adverse impacts within the drainage basin.

(9) The department and the governing boards, on or before July 1, 1994, shall adopt rules to incorporate this section, relying primarily on the existing rules of the department and the water management districts, into the rules governing the management and storage of surface waters. Such rules shall seek to achieve a statewide, coordinated and consistent permitting approach to activities regulated under this part. Variations in permitting criteria in the rules of individual water management districts or the department shall only be provided to address differing physical or natural characteristics. Such rules adopted pursuant to this subsection shall include the special criteria adopted pursuant to s. 403.061(30) and may include the special criteria adopted pursuant to s. 403.061(35). Such rules shall include a provision requiring that a notice of intent to deny or a permit denial based upon this section shall contain an explanation of the reasons for such denial and an explanation, in general terms, of what changes, if any, are necessary to address such reasons for denial. Such rules may establish exemptions and general permits, if such exemptions and general permits do not allow significant adverse impacts to occur individually or cumulatively. Such rules may

require submission of proof of financial responsibility which may include the posting of a bond or other form of surety prior to the commencement of construction to provide reasonable assurance that any activity permitted pursuant to this section, including any mitigation for such permitted activity, will be completed in accordance with the terms and conditions of the permit once the construction is commenced. Until rules adopted pursuant to this subsection become effective, existing rules adopted under this part and rules adopted pursuant to the authority of [2]ss. 403.91-403.929 shall be deemed authorized under this part and shall remain in full force and effect. Neither the department nor the governing boards are limited or prohibited from amending any such rules.

(10) The department in consultation with the water management districts by rule shall establish water quality criteria for wetlands, which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

(11)(a) In addition to the statutory exemptions applicable to this part, dredging and filling permitted under rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or exempted from regulation under such rules, shall be exempt from the rules adopted pursuant to subsection (9) if the dredging and filling activity did not require a permit under rules adopted pursuant to this part prior to the effective date of the rules adopted pursuant to subsection (9). The exemption from the rules adopted pursuant to subsection (9) shall extend to:

1. The activities approved by said chapter 403 permit for the term of the permit; or

2. Dredging and filling exempted from regulation under rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, which is commenced prior to the effective date of the rules adopted pursuant to subsection (9), is completed within 5 years after the effective date of such rules, and regarding which, at all times during construction, the terms of the dredge and fill exemption continue to be met.

(b) This exemption shall also apply to any modification of such permit which does not constitute a substantial modification. For the purposes of this paragraph, a substantial modification is one which is reasonably expected to lead to substantially different environmental impacts. This exemption shall also apply to a modification which lessens the environmental impact. A modification qualifying for this exemption shall be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in existence prior to the effective date of the rules adopted under subsection (9).

(12)(a) Activities approved in a conceptual, general, or individual permit issued pursuant to rules adopted pursuant to this part and which were either permitted under rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or exempt from regulation under such rules, all prior to the effective date of rules adopted pursuant to subsection (9), shall be exempt from the rules adopted pursuant to subsection (9). This exemption shall be for the plans, terms, and conditions approved in the permit issued under rules adopted pursuant to this part or in any permit issued under rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and shall be valid for the term of such permits. This exemption shall also apply to any modification of the plans, terms, and conditions of the permit, including new activities, within the geographical area to which the permit issued under rules adopted pursuant to this part applies; however, this exemption shall not apply to a modification that would extend the permitted time limit for construction beyond 2 additional years, or to any modification which is reasonably expected to lead to substantially different water resource impacts. This exemption shall also apply to any modification which lessens the impact to water resources. A modification of the permit qualifying for this exemption shall be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, as applicable, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such modifications reviewed under the rules adopted under this part, as amended in accordance with subsection (9).

(b) Surface water and wetland delineations identified and approved by the permit issued under rules adopted pursuant to this part prior to the effective date of rules adopted pursuant to subsection (9) shall remain valid until expiration of such permit, notwithstanding the methodology ratified in s. 373.4211. For purposes of this section, the term "identified and approved" means:

1. The delineation was field-verified by the permitting agency and such verification was surveyed as part of the application review process for the permit; or

2. The delineation was field-verified by the permitting agency and approved by the permit.

Where surface water and wetland delineations were not identified and approved by the permit issued under rules adopted pursuant to this part, delineations within the geographical area to which such permit applies shall be determined pursuant to the rules applicable at the time the permit was issued, notwithstanding the methodology ratified in s. 373.4211. This paragraph shall also apply to any modification of the permit issued under rules adopted pursuant to this part within the geographical area to which the permit applies.

(c) Within the boundaries of a jurisdictional declaratory statement issued under s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, in which activities have been permitted as described in paragraph (a), the delineation of the landward extent of waters of the state for the purposes of regulation under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, as such rules existed prior to the effective date of the rules adopted pursuant to subsection (9), shall remain valid for the duration of the permit issued pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and shall be used in the review of any modification of such permit.

(13) Any declaratory statement issued by the department under s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, or by a water management district under s. 373.421, in response to a petition filed on or before June 1, 1994, shall continue to be valid for the duration of such declaratory statement. Any such petition pending on June 1, 1994, shall be exempt from the methodology ratified in s. 373.4211, but the rules of the department or the relevant water management district, as applicable, in effect prior to the effective date of s. 373.4211, shall apply. Until May 1, 1998, activities within the boundaries of an area subject to a petition pending on June 1, 1994, and prior to final agency action on such petition, shall be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9). In the event that a jurisdictional declaratory statement pursuant to the vegetative index in effect prior to the effective date of chapter 84-79, Laws of Florida, has been obtained and is valid prior to the effective date of the rules adopted under subsection (9) or July 1, 1994, whichever is later, and the affected lands are part of a project for which a master development order has been issued pursuant to s. 380.06(9), the declaratory statement shall remain valid for the duration of the buildout period of the project. Any jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in rule 17-4.022, Florida Administrative Code, on April 1, 1985, shall remain in effect for a period of 5 years following the effective date of this act if proof of such validation is submitted to the department prior to January 1, 1995. In the event that a jurisdictional determination has been revalidated by the department pursuant to this subsection and the affected lands are part of a project for which a development order has been issued pursuant to s. 380.06(4), a final development order to which s. 163.3167(5) applies has been issued, or a vested rights determination has been issued pursuant to s. 380.06(8), the jurisdictional determination shall remain valid until the completion of the project, provided proof of such validation and documentation establishing that the project meets the requirements of this sentence are submitted to the department prior to January 1, 1995. Activities proposed within the boundaries of a valid declaratory statement issued pursuant to a petition submitted to either the department or the relevant water management district on or before June 1, 1994, or a revalidated jurisdictional determination, prior to its expiration shall continue thereafter to be exempt from the methodology ratified in s. 373.4211 and to be reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9).

(14) An application under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or this part for dredging and filling or other activity, which is pending on June 15, 1994, or which is submitted and complete prior to the effective date of rules adopted pursuant to subsection (9) shall be:

(a) Acted upon by the agency which is responsible for review of the application under the operating agreement adopted pursuant to s. 373.046(4);

(b) Reviewed under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted pursuant to subsection (9), unless the applicant elects to have such activities reviewed under the rules of this part, as amended in accordance with subsection (9); and

(c) Exempt from the methodology ratified in s. 373.4211, but the rules of the department and water management districts to delineate surface waters and wetlands in effect prior to the effective date of s. 373.4211 shall apply, unless the applicant elects to have such ratified methodology apply.

(15) Activities associated with mining operations as defined by and subject to ss. 378.201-378.212 and 378.701-378.703 and included in a conceptual reclamation plan or modification application submitted prior to July 1, 1996, shall continue to be reviewed under the rules of the department adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, the rules of the water management districts under this part, and interagency agreements, in effect on January 1, 1993. Such activities shall be exempt from rules adopted pursuant to subsection (9) and the statewide methodology ratified pursuant to s. 373.4211. As of January 1, 1994, such activities may be issued permits authorizing construction for the life of the mine. Lands added to a conceptual reclamation plan subject to this subsection through a modification submitted after July 1, 1996, which are contiguous to the conceptual reclamation plan area shall be exempt from rules adopted under subsection (9), except that the total acreage of the conceptual reclamation plan may not be increased through such modification and the cumulative acreage added may not exceed 3 percent of the conceptual reclamation plan area. Lands that have been mined or disturbed by mining activities, lands subject to a conservation easement under which the grantee is a state or federal regulatory agency, and lands otherwise preserved as part of a permitting review may not be removed from the conceptual reclamation land area under this subsection.

(16) Until October 1, 2000, regulation under rules adopted pursuant to this part of any sand, limerock, or limestone mining activity which is located in Township 52 South, Range 39 East, sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36; in Township 52 South, Range 40 East, sections 6, 7, 8, 18, and 19; in Township 53 South, Range 39 East, sections 1, 2, 13, 21, 22, 23, 24, 25, 26, 33, 34, 35, and 36; and in Township 54 South, Range 38 East, sections 24, and 25, and 36, shall not include the rules adopted pursuant to subsection (9). In addition, until October 1, 2000, such activities shall continue to be regulated under the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, as such rules existed prior to the effective date of the rules adopted pursuant to subsection (9) and such dredge and fill jurisdiction shall be that which existed prior to January 24, 1984. In addition, any such sand, limerock, or limestone mining activity shall be approved by Miami-Dade County and the United States Army Corps of Engineers. This section shall only apply to mining activities which are continuous and carried out on land contiguous to mining operations that were in existence on or before October 1, 1984.

(17) The variance provisions of s. 403.201 are applicable to the provisions of this section or any rule adopted pursuant to this section. The governing boards and the department are authorized to review and take final agency action on petitions requesting such variances for those activities they regulate under this part and s. 373.4145.

(18) The department and each water management district responsible for implementation of the environmental resource permitting program shall develop a uniform mitigation assessment method for wetlands and other surface waters. The department shall adopt the uniform mitigation assessment method by rule no later than July 31, 2002. The rule shall provide an exclusive and consistent process for determining the amount of mitigation required to offset impacts to wetlands and other surface waters, and, once effective, shall supersede all rules, ordinances, and variance procedures from ordinances that determine the amount of mitigation needed to offset such impacts. Once the department adopts the uniform mitigation assessment method by rule, the uniform mitigation assessment method shall be binding on the department, the water management districts, local governments, and any other governmental agencies and shall be the sole means to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits. A water management district and any other governmental agency subject to chapter 120 may apply the uniform mitigation assessment method without the need to adopt it pursuant to s. 120.54. It shall be a goal of the department and water management districts that the

uniform mitigation assessment method developed be practicable for use within the timeframes provided in the permitting process and result in a consistent process for determining mitigation requirements. It shall be recognized that any such method shall require the application of reasonable scientific judgment. The uniform mitigation assessment method must determine the value of functions provided by wetlands and other surface waters considering the current conditions of these areas, utilization by fish and wildlife, location, uniqueness, and hydrologic connection, and, when applied to mitigation banks, the factors listed in s. 373.4136(4). The uniform mitigation assessment method shall also account for the expected time-lag associated with offsetting impacts and the degree of risk associated with the proposed mitigation. The uniform mitigation assessment method shall account for different ecological communities in different areas of the state. In developing the uniform mitigation assessment method, the department and water management districts shall consult with approved local programs under s. 403.182 which have an established mitigation program for wetlands or other surface waters. The department and water management districts shall consider the recommendations submitted by such approved local programs, including any recommendations relating to the adoption by the department and water management districts of any uniform mitigation methodology that has been adopted and used by an approved local program in its established mitigation program for wetlands or other surface waters. Environmental resource permitting rules may establish categories of permits or thresholds for minor impacts under which the use of the uniform mitigation assessment method will not be required. The application of the uniform mitigation assessment method is not subject to s. 70.001. In the event the rule establishing the uniform mitigation assessment method is deemed to be invalid, the applicable rules related to establishing needed mitigation in existence prior to the adoption of the uniform mitigation assessment method, including those adopted by a county which is an approved local program under s. 403.182, and the method described in paragraph (b) for existing mitigation banks, shall be authorized for use by the department, water management districts, local governments, and other state agencies.

(a) In developing the uniform mitigation assessment method, the department shall seek input from the United States Army Corps of Engineers in order to promote consistency in the mitigation assessment methods used by the state and federal permitting programs.

(b) An entity which has received a mitigation bank permit prior to the adoption of the uniform mitigation assessment method shall have impact sites assessed, for the purpose of deducting bank credits, using the credit assessment method, including any functional assessment methodology, which was in place when the bank was permitted; unless the entity elects to have its credits redetermined, and thereafter have its credits deducted, using the uniform mitigation assessment method.

(19)(a) Financial responsibility for mitigation for wetlands and other surface waters required by a permit issued pursuant to this part for activities associated with the extraction of limestone and phosphate are subject to approval by the department as part of the permit application review. Financial responsibility for permitted activities that will occur over a period of 3 years or less of mining operations must be provided to the department before the commencement of mining operations and must equal 110 percent of the estimated mitigation costs for wetlands and other surface waters affected under the permit. For permitted activities that will occur over a period of more than 3 years of mining operations, the initial financial responsibility demonstration must equal 110 percent of the estimated mitigation costs for wetlands and other surface waters affected in the first 3 years of operation under the permit. For each year thereafter, the financial responsibility demonstration must be updated, including providing an amount equal to 110 percent of the estimated mitigation costs for the next year of operations under the permit for which financial responsibility has not already been demonstrated and to release portions of the financial responsibility mechanisms in accordance with applicable rules.

(b) The mechanisms for providing financial responsibility pursuant to the permit shall, at the discretion of the applicant, include the following:

1. Cash or cash equivalent deposited in an escrow account.
2. Irrevocable letter of credit.
3. Performance bond.
4. Trust fund agreement.
5. Guarantee bond.

6. Insurance certificate.

7. A demonstration that the applicant meets the financial test and corporate guarantee requirements set forth in 40 C.F.R. s. 264.143(f).

8. A demonstration that the applicant meets the self-bonding provision set forth in 30 C.F.R. s. 800.23.

The form and content of all financial responsibility mechanisms shall be approved by the department. When utilizing an irrevocable letter of credit, performance bond, or guarantee bond, all payments made thereunder shall be deposited into a standby trust fund established contemporaneously with the posting of the financial assurance instrument. All trust fund agreements and standby trust fund agreements shall provide that distributions therefrom will be made only at the request of the department and that the trustees of such funds shall be either a national or state-chartered banking institution or a state-regulated trust company.

(c) The provisions of this subsection shall not apply to any mitigation for wetlands and other surface waters that is required pursuant to a permit or permits initially issued by the department or district prior to January 1, 2005.

(d) Nothing provided in this subsection supersedes or modifies the financial responsibility requirements of s. 378.208.

History.—ss. 4, 5, ch. 86-186; s. 30, ch. 93-213; s. 4, ch. 94-122; s. 3, ch. 96-370; s. 5, ch. 96-371; ss. 2, 5, ch. 97-222; s. 169, ch. 99-13; s. 26, ch. 99-385; s. 4, ch. 2000-133; s. 1, ch. 2002-253; s. 11, ch. 2005-36; s. 3, ch. 2005-215; s. 1, ch. 2005-273; s. 1, ch. 2007-191; s. 84, ch. 2008-4; s. 4, ch. 2008-150; s. 30, ch. 2010-205; s. 44, ch. 2012-5; s. 8, ch. 2016-130; s. 17, ch. 2017-3; s. 16, ch. 2018-158; s. 33, ch. 2020-150.

[1]**Note.**—Repealed by s. 45, ch. 93-213.

[2]**Note.**—Sections 403.91-403.925 and 403.929 were repealed by s. 45, ch. 93-213, and s. 403.913, as amended by s. 46, ch. 93-213, was transferred to s. 403.939 and subsequently repealed by s. 18, ch. 95-145. The only section remaining within the cited range is s. 403.927.

373.4141 Permits; processing.—

(1) Within 30 days after receipt of an application for a permit under this part, the department or the water management district shall review the application and shall request submittal of all additional information the department or the water management district is permitted by law to require. If the applicant believes any request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department or water management district shall review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department or water management district for such additional information is not authorized by law or rule, the department or water management district, at the applicant's request, shall proceed to process the permit application.

(2) A permit shall be approved, denied, or subject to a notice of proposed agency action within 60 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

(3) Processing of applications for permits for affordable housing projects shall be expedited to a greater degree than other projects.

(4) A state agency or an agency of the state may not require as a condition of approval for a permit or as an item to complete a pending permit application that an applicant obtain a permit or approval from any other local, state, or federal agency without explicit statutory authority to require such permit or approval.

History.—s. 4, ch. 96-370; s. 1, ch. 2002-160; s. 7, ch. 2012-205.

373.4142 Water quality within stormwater treatment systems.—State surface water quality standards applicable to waters of the state, as defined in s. 403.031(13), shall not apply within a stormwater management system which is designed, constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or noticed exemption issued pursuant to chapter 62-25, Florida Administrative Code; a valid permit or exemption under s. 373.4145 within the Northwest Florida Water Management District; a valid permit issued on or subsequent to April 1, 1986, within the Suwannee River Water Management District or the St. Johns River Water Management District pursuant to this part; a valid permit issued on or subsequent to March 1, 1988, within the Southwest Florida Water

Management District pursuant to this part; or a valid permit issued on or subsequent to January 6, 1982, within the South Florida Water Management District pursuant to this part. Such inapplicability of state water quality standards shall be limited to that part of the stormwater management system located upstream of a manmade water control structure permitted, or approved under a noticed exemption, to retain or detain stormwater runoff in order to provide treatment of the stormwater. The additional use of such a stormwater management system for flood attenuation or irrigation shall not divest the system of the benefits of this exemption. This section shall not affect the authority of the department and water management districts to require reasonable assurance that the water quality within such stormwater management systems will not adversely impact public health, fish and wildlife, or adjacent waters.

History.—s. 7, ch. 94-122; s. 2, ch. 2007-191.

373.4143 Declaration of policy.— It is the policy of the Legislature that the state provide efficient government services by consolidating, to the maximum extent practicable, federal and state permitting associated with wetlands and navigable waters within the state.

History.—s. 2, ch. 2005-273.

373.4144 Federal environmental permitting.—

(1) It is the intent of the Legislature to:

(a) Facilitate coordination and a more efficient process of implementing regulatory duties and functions between the Department of Environmental Protection, the water management districts, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, the Fish and Wildlife Conservation Commission, and other relevant federal and state agencies.

(b) Authorize the Department of Environmental Protection to obtain issuance by the United States Army Corps of Engineers, pursuant to state and federal law and as set forth in this section, of an expanded state programmatic general permit, or a series of regional general permits, for categories of activities in waters of the United States governed by the Clean Water Act and in navigable waters under the Rivers and Harbors Act of 1899 which are similar in nature, which will cause only minimal adverse environmental effects when performed separately, and which will have only minimal cumulative adverse effects on the environment.

(c) Use the mechanism of such a state general permit or such regional general permits to eliminate overlapping federal regulations and state rules that seek to protect the same resource and to avoid duplication of permitting between the United States Army Corps of Engineers and the department for minor work located in waters of the United States, including navigable waters, thus eliminating, in appropriate cases, the need for a separate individual approval from the United States Army Corps of Engineers while ensuring the most stringent protection of wetland resources.

(d) Direct the department not to seek issuance of or take any action pursuant to any such permit or permits unless such conditions are at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899.

(2)(a) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 10 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers, if the general permit is at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899.

(b) By seeking to use a statewide programmatic general permit, an applicant consents to applicable federal wetland jurisdiction criteria, which are not included pursuant to this part, but which are authorized by the regulations implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899 as required by the United States Army Corps of Engineers, notwithstanding s. 373.4145 and for the limited purpose of implementing the state programmatic general permit authorized by this subsection.

(3) The department may pursue a series of regional general permits for construction activities in wetlands or surface waters or delegation or assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899.

History.—s. 3, ch. 2005-273; s. 1, ch. 2012-114; s. 8, ch. 2012-205; s. 1, ch. 2016-195.

373.4145 Part IV permitting program within the geographical jurisdiction of the Northwest Florida Water Management District.—

(1) Within the geographical jurisdiction of the Northwest Florida Water Management District, taking into consideration the differing physical and natural characteristics of the area, the department and the district shall:

(a) Jointly develop rules to regulate the construction, operation, alteration, maintenance, abandonment, and removal of stormwater management systems. The department shall initiate the rulemaking process within 60 days after the effective date of this act and shall implement the rules no sooner than January 1, 2007; the district may implement the rules without adoption pursuant to s. 120.54. Until the stormwater management system rules take effect, chapter 62-25, Florida Administrative Code, shall remain in full force and effect and shall be implemented by the department. Notwithstanding the provisions of this section, chapter 62-25, Florida Administrative Code, may be amended by the department as necessary to comply with any requirements of state or federal laws or regulations, or any condition imposed by a federal program, or as a requirement for receipt of federal grant funds. The intent of the rules created under this paragraph is to update existing stormwater rules, to improve water quality and flood protection, and to apply the least restrictive measures and criteria adopted in other water management district rules.

(b) Jointly develop rules for the management and storage of surface waters under this part. The department shall initiate the rulemaking process within 60 days after the effective date of this act and shall implement the rules no sooner than January 1, 2008; the district may implement the rules without adoption pursuant to s. 120.54. Until the rules for the management and storage of surface waters under this part take effect, rules adopted pursuant to the authority of ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in effect prior to July 1, 1994, shall remain in full force and effect and shall be implemented by the department. However, the department is authorized to establish additional exemptions and general permits for dredging and filling, if such exemptions or general permits do not allow significant adverse impacts to occur individually or cumulatively. However, for the purpose of chapter 62-312, Florida Administrative Code, the landward extent of surface waters of the state identified in rule 62-312.030(2), Florida Administrative Code, shall be determined in accordance with the methodology in rules 62-340.100 through 62-340.600, Florida Administrative Code. In implementing s. 373.421(2), the department shall determine the extent of those surface waters and wetlands within the regulatory authority of the department as described in this paragraph. At the request of the petitioner, the department shall also determine the extent of surface waters and wetlands that can be delineated by the methodology ratified in s. 373.4211, but that are not subject to the regulatory authority of the department as described in this paragraph. The intent of the rules created under this paragraph is to improve the management and storage of surface waters with minimal impact on property interests and to consider the rural nature, current development trends, and abundant natural resources of the district relative to the permitting thresholds and requirements.

(c) Pursue streamlining of the federal and state wetland permitting programs pursuant to ss. 373.4143 and 373.4144.

(d) Implement, to the maximum extent possible, streamlining measures, including electronic permitting, field permitting, and certification programs for activities with minimal individual or cumulative impact, informal wetland determinations, and other similar measures.

(2) The rules adopted under subsection (1), as applicable, shall:

(a) Incorporate the exemptions in ss. 373.406 and 403.813(1).

(b) Incorporate the provisions of rule 62-341.475(1)(f), Florida Administrative Code, applicable to single-family homes located entirely or partially within wholly owned, isolated wetlands.

(c) Exempt from the notice and permitting requirements of this part the construction or private use of a single-family dwelling unit, duplex, triplex, or quadruplex that:

1. Is not part of a larger common plan of development or sale proposed by the applicant.

2. Does not involve wetlands or other surface waters.

(d) Incorporate the exemptions and general permits that are effective under this part and have been enacted by rule by the department and other water management districts, including the general permits authorized by s. 403.814.

(e) Provide an exemption for the repair, stabilization, or paving of county-maintained roads existing on or before January 1, 2002, and the repair or replacement of bridges that are part of the roadway consistent with the provisions of s. 403.813(1)(t), notwithstanding the provisions of s. 403.813(1)(t)7. requiring adoption of a general permit applicable within the Northwest Florida Water Management District and the repeal of such exemption upon the adoption of a general permit.

(f) Exempt from rule criteria under paragraph (1)(b) an alteration of a wholly owned, artificial surface water created entirely from uplands that does not connect to surface waters of the state, except for those created for the purpose of providing mitigation under this part.

(3) The department and the Northwest Florida Water Management District shall enter into an operating agreement under s. 373.046 to effectively implement this section and provide the district with the amount of responsibility under the agreement that resources allow, including, at a minimum, the responsibility for regulating silviculture and agriculture. The operating agreement shall encourage local delegation of the responsibilities under this section pursuant to s. 373.441.

(4) The provisions of s. 373.414(11)-(14) shall not apply to rules adopted under this section.

(5) The following activities shall continue to be governed by the provisions of s. 373.4145, 1994 Supplement to the Florida Statutes 1993:

(a) The operation and routine custodial maintenance of activities legally in existence before the effective date of the rules adopted under subsection (1), as long as the terms and conditions of the permit, exemption, or other authorization for such activities continue to be met.

(b) The activities approved in a permit issued pursuant to s. 373.4145, 1994 Supplement to the Florida Statutes 1993, and the review of activities proposed in applications received and completed before the effective date of the rules adopted under subsection (1), as applicable. This paragraph shall also apply to any modification of the plans, terms, and conditions of a permit issued pursuant to s. 373.4145, 1994 Supplement to the Florida Statutes 1993, that lessens the environmental impact, except that any such modification shall not extend the time limit for construction beyond 2 additional years.

This subsection shall not apply to any activity that is altered, modified, expanded, abandoned, or removed after adoption of the applicable rules under subsection (1).

(6) Unless the petitioner elects to apply chapter 62-340, Florida Administrative Code, to all wetlands, the delineation of the landward extent of wetlands and other surface waters for petitions filed under s. 373.421(2) prior to the effective date of the rules adopted under paragraph (1)(b) shall continue to be determined in accordance with rule 62-312.030(2), Florida Administrative Code, in effect July 1, 1994, and rules 62-340.100 through 62-340.600, Florida Administrative Code, as ratified in s. 373.4211.

(7) If the Legislature in any given fiscal year fails to fund and staff the environmental resource permitting program established under this section, the environmental resource permitting program shall be suspended for that fiscal year and the rules and statutes governing development activity in the district shall revert to those in effect on April 1, 2006, until such time as funding and staffing levels are restored consistent with this section.

History.—s. 8, ch. 94-122; s. 18, ch. 96-247; s. 5, ch. 96-370; s. 1, ch. 99-353; s. 1, ch. 2003-167; s. 32, ch. 2005-71; s. 4, ch. 2005-273; ss. 1, 4, ch. 2006-228; s. 36, ch. 2009-21; s. 75, ch. 2014-17.

373.4146 State assumption of the federal Clean Water Act, section 404 dredge and fill permitting program.—

(1) As used in this section, the term "state assumed waters" means waters of the United States that the state assumes permitting authority over pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and rules promulgated thereunder, for the purposes of permitting the discharge of dredge or fill material.

(2) The department has the power and authority to assume, in accordance with 40 C.F.R. part 233, the dredge and fill permitting program established in s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and rules promulgated thereunder. The department may adopt any federal requirements, criteria, or regulations necessary to obtain assumption, including, but not limited to, the guidelines specified in 40 C.F.R. part 230 and the public interest review criteria in 33 C.F.R. s. 320.4(a). Any rule, standard, or other requirement adopted pursuant to the authority granted in this subsection for purposes of obtaining assumption may not become effective or otherwise enforceable until the United States Environmental Protection Agency has approved the state's assumption application. This legislative authority is intended to be sufficient to enable the department to assume and implement the federal section 404 dredge and fill permitting program in conjunction with the environmental resource permitting program established in this chapter.

(3) To the extent that state law applies and does not conflict with the federal requirements identified in subsection (2), the application of such state law to further regulate discharges in state assumed waters is not prohibited. Provisions of state law which conflict with the federal requirements identified in subsection (2) do not apply to state administered section 404 permits.

(4) A state administered section 404 permit is not required for activities as specified in 33 U.S.C. s. 1344(f), 40 C.F.R. s. 232.3, or 33 C.F.R. s. 323.4. The exemptions established in ss. 373.406, 373.4145, and 403.813 still apply to environmental resource permits. However, the exemptions identified in ss. 373.406, 373.4145, and 403.813 may not be applied to state administered section 404 permits.

(5) Upon state assumption of the section 404 dredge and fill permitting program pursuant to subsection (2):

(a) The department must grant or deny an application for a state administered section 404 permit within the time allowed for permit review under 40 C.F.R. part 233, subparts D and F. The department is specifically exempted from the time limitations provided in ss. 120.60 and 373.4141 for state administered section 404 permits.

(b) All state administered section 404 permits issued under this section must be for a period of no more than 5 years. Upon an applicant's submittal of a timely application for reissuance, a state administered section 404 permit does not expire until the department takes final action upon the application or until the last day for seeking judicial review of the agency order or a later date fixed by order of the reviewing court. If the department fails to render a permitting decision within the time allowed by s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., 40 C.F.R. part 233, subparts D and F, or a memorandum of agreement executed by the department and the United States Environmental Protection Agency, whichever is shorter, the applicant may apply for an order from the circuit court requiring the department to render a decision within a specified time. The department must adopt by rule an expedited permit review process that is consistent with federal law for the reissuance of state administered section 404 permits where there have been no material changes in the scope of the project as originally permitted, site and surrounding environmental conditions have not changed, and the applicant does not have a history of noncompliance with the existing permit. The decision by the department to approve the reissuance of any state administered section 404 permit issued pursuant to this section is subject to ss. 120.569 and 120.57 only with respect to any material permit modification or material changes in the scope of the project as originally permitted.

(c) The department may delegate administration of the state administered section 404 permitting program if such delegation is in accordance with federal law. The department must retain the authority to review, modify, revoke, or rescind a state administered section 404 permit issued by any delegated entity to ensure consistency with federal law.

History.—s. 1, ch. 2018-88.

373.4149 Miami-Dade County Lake Belt Plan.—

(1) The Legislature hereby accepts and adopts the recommendations contained in the Phase I Lake Belt Report and Plan, dated February 1997 and hereby accepts the Phase II Plan, submitted on February 9, 2001, to the Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee. These plans shall collectively be known as the Miami-Dade County Lake Belt Plan. This plan was developed to enhance the water supply for Miami-Dade County and the Everglades, including appropriate wellfield protection measures; to maximize efficient recovery of limestone while promoting the social and economic welfare of the community and protecting the environment; and to educate various groups and the general public of the benefits of the plan.

(2)(a) The Legislature recognizes that deposits of limestone and sand suitable for production of construction aggregates, cement, and road base materials are located in limited areas of the state.

(b) The Legislature recognizes that the deposit of limestone available in South Florida is limited due to urbanization to the east and the Everglades to the west.

(3) The Miami-Dade County Lake Belt Area is that area bounded by the Ronald Reagan Turnpike to the east, the Miami-Dade-Broward County line to the north, Krome Avenue to the west and Tamiami Trail to the south together with the land south of Tamiami Trail in sections 5, 6, 7, 8, 17, and 18, Township 54 South, Range 39 East, sections 24, 25, and 36, Township 54 South, Range 38 East, less those portions of section 3, Township 52 South, Range 39 East south of Krome Avenue and west of U.S. Highway 27, and less sections 35 and 36 and the east one-half of sections 24 and 25, Township 53 South, Range 39 East and Government Lots 1 and 2, lying between Townships 53 and 54 South, Range 39 East and those portions of sections 1 and 2, Township 54 South, Range 39 East, lying north of Tamiami Trail.

(4) The identification of the Miami-Dade County Lake Belt Area shall not preempt local land use jurisdiction, planning, or regulatory authority in regard to the use of land by private land owners. When amending local comprehensive plans, or implementing zoning regulations, development regulations, or other local regulations, Miami-Dade County shall strongly consider limestone mining activities and ancillary operations, such as lake excavation, including use of explosives, rock processing, cement, concrete and asphalt products manufacturing, and ancillary activities, within the rock mining supported and allowable areas of the Miami-Dade County Lake Belt Plan adopted by subsection (1); provided, however, that limerock mining activities are consistent with wellfield protection. Rezonings, amendments to local zoning and subdivision regulations, and amendments to local comprehensive plans concerning properties that are located within 1 mile of the Miami-Dade County Lake Belt Area shall be compatible with limestone mining activities. No rezonings, variances, amendments to local zoning and subdivision regulations which would result in an increase in residential density, or amendments to local comprehensive plans for any residential purpose may be approved for any property located in sections 35 and 36 and the east one-half of sections 24 and 25, Township 53 South, Range 39 East until such time as there is no active mining within 2 miles of the property. This section does not preclude residential development that complies with current regulations.

(5) The secretary of the Department of Environmental Protection, the executive director of the Department of Economic Opportunity, the secretary of the Department of Transportation, the Commissioner of Agriculture, the executive director of the Fish and Wildlife Conservation Commission, and the executive director of the South Florida Water Management District may enter into agreements with landowners, developers, businesses, industries, individuals, and governmental agencies as necessary to effectuate the Miami-Dade County Lake Belt Plan and the provisions of this section.

(6)(a) All agencies of the state shall review the status of their landholdings within the boundaries of the Miami-Dade County Lake Belt. Those lands for which no present or future use is identified must be made available, together with other suitable lands, to the Department of Environmental Protection for its use in carrying out the objectives of this act.

(b) It is the intent of the Legislature that lands provided to the Department of Environmental Protection be used for land exchanges to further the objectives of this act.

History.—s. 21, ch. 92-132; s. 5, ch. 94-122; s. 1010, ch. 95-148; s. 10, ch. 97-222; s. 1, ch. 99-298; s. 22, ch. 2000-197; ss. 1, 2, ch. 2000-285; s. 3, ch. 2001-172; s. 1, ch. 2006-13; s. 249, ch. 2011-142; s. 1, ch. 2015-141; s. 38, ch. 2016-10.

373.41492 Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt.—

(1) The Legislature finds that the impact of mining within the rock mining supported and allowable areas of the Miami-Dade County Lake Belt Plan adopted by s. 373.4149(1) can best be offset by the implementation of a comprehensive mitigation plan. The Lake Belt Mitigation Plan consists of those provisions contained in subsections (2)-(8). The per-ton mitigation fee assessed on limestone sold from the Miami-Dade County Lake Belt Area and sections 10, 11, 13, 14, Township 52 South, Range 39 East, and sections 24, 25, 35, and 36, Township 53 South, Range 39 East, shall be used for acquiring environmentally sensitive lands and for restoration, monitoring, maintenance, and other environmental purposes. It is the intent of the Legislature that the per-ton mitigation fee not be a revenue source

for purposes other than enumerated in this section. Further, the Legislature finds that the public benefit of a sustainable supply of limestone construction materials for public and private projects requires a coordinated approach to permitting activities on wetlands within Miami-Dade County in order to provide the certainty necessary to encourage substantial and continued investment in the limestone processing plant and equipment required to efficiently extract the limestone resource. It is the intent of the Legislature that the Lake Belt Mitigation Plan satisfy all local, state, and federal requirements for mining activity within the rock mining supported and allowable areas.

(2) To provide for the mitigation of wetland resources lost to mining activities within the Miami-Dade County Lake Belt Plan, effective October 1, 1999, a mitigation fee is imposed on each ton of limerock and sand extracted by any person who engages in the business of extracting limerock or sand from within the Miami-Dade County Lake Belt Area and the east one-half of sections 24 and 25 and all of sections 35 and 36, Township 53 South, Range 39 East. The mitigation fee is imposed for each ton of limerock and sand sold from within the properties where the fee applies in raw, processed, or manufactured form, including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. The mitigation fee imposed by this subsection for each ton of limerock and sand sold shall be 25 cents per ton, beginning on January 1, 2016; 15 cents per ton beginning on January 1, 2017; and 5 cents per ton beginning on January 1, 2018, and thereafter. To pay for seepage mitigation projects, including groundwater and surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee, and to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County, a water treatment plant upgrade fee is imposed within the same Lake Belt Area subject to the mitigation fee and upon the same kind of mined limerock and sand subject to the mitigation fee. The water treatment plant upgrade fee imposed by this section for each ton of limerock and sand sold shall be 6 cents per ton, and the collection of this fee shall cease once the total amount of proceeds collected for this fee reaches the amount of the actual moneys necessary to design and construct the water treatment plant upgrade, as determined in an open, public solicitation process. The water treatment plant upgrade fee imposed by this section expires July 1, 2018. Any limerock or sand that is used within the mine from which the limerock or sand is extracted is exempt from the fees. The amount of the mitigation fee and the water treatment plant upgrade fee imposed under this section must be stated separately on the invoice provided to the purchaser of the limerock or sand product from the limerock or sand miner, or its subsidiary or affiliate, for which the fee or fees apply. The limerock or sand miner, or its subsidiary or affiliate, who sells the limerock or sand product shall collect the mitigation fee and the water treatment plant upgrade fee and forward the proceeds of the fees to the Department of Revenue on or before the 20th day of the month following the calendar month in which the sale occurs. The proceeds of a fee imposed by this section include all funds collected and received by the Department of Revenue relating to the fee, including interest and penalties on a delinquent fee. The amount deducted for administrative costs may not exceed 3 percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the fee.

(3) The mitigation fee and the water treatment plant upgrade fee imposed by this section must be reported to the Department of Revenue. Payment of the mitigation and the water treatment plant upgrade fees must be accompanied by a form prescribed by the Department of Revenue.

(a) The proceeds of the mitigation fee, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund.

(b) The proceeds of the water treatment plant upgrade fee, less administrative costs and less 2 cents per ton transferred pursuant to paragraph (c), must be transferred by the Department of Revenue to a trust fund established by Miami-Dade County, for the sole purpose authorized by paragraph (6)(a).

(c) Until December 1, 2016, or until funding for the study is complete, whichever comes earlier, 2 cents per ton, not to exceed $300,000, shall be transferred by the Department of Revenue to the State Fire Marshal to be used to fund the study required under s. 552.30 to review the established statewide ground vibration limits for construction materials mining activities and to review any legitimate claims paid for damages caused by such mining activities. Any amount not used to fund the study shall be transferred to the trust fund established by Miami-Dade County, for the sole purpose authorized by paragraph (6)(a).

(4)(a) The Department of Revenue shall administer, collect, and enforce the mitigation and treatment plant upgrade fees authorized under this section in accordance with the procedures used to administer, collect, and enforce

the general sales tax imposed under chapter 212. The provisions of chapter 212 with respect to the authority of the Department of Revenue to audit and make assessments, the keeping of books and records, and the interest and penalties imposed on delinquent fees apply to this section. The fees may not be included in computing estimated taxes under s. 212.11, and the dealer's credit for collecting taxes or fees provided for in s. 212.12 does not apply to the fees imposed by this section.

(b) In administering this section, the Department of Revenue may employ persons and incur expenses for which funds are appropriated by the Legislature. The Department of Revenue shall adopt rules and prescribe and publish forms necessary to administer this section. The Department of Revenue shall establish audit procedures and may assess delinquent fees.

(5) Each January 1, beginning January 1, 2010, through December 31, 2011, the per-ton mitigation fee shall be increased by 2.1 percentage points, plus a cost growth index. The cost growth index shall be the percentage change in the weighted average of the Employment Cost Index for All Civilian Workers (ecu 10001I), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, and the percentage change in the Producer Price Index for All Commodities (WPU 00000000), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, compared to the weighted average of these indices for the previous year. The weighted average shall be calculated as 0.6 times the percentage change in the Employment Cost Index for All Civilian Workers (ecu 10001I), plus 0.4 times the percentage change in the Producer Price Index for All Commodities (WPU 00000000). If either index is discontinued, it shall be replaced by its successor index, as identified by the United States Department of Labor.

(6)(a) The proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of mining activities and to conduct water quality monitoring to ensure the protection of water resources within the Lake Belt Area. Such mitigation may include the purchase, enhancement, restoration, and management of wetlands and uplands in the Everglades watershed, the purchase of mitigation credit from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Miami-Dade County Lake Belt Area or the Everglades watershed. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program, the Internal Improvement Trust Fund, the South Florida Water Management District, and Miami-Dade County, for the purchase of lands that were acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land under s. 373.4149 for mitigation due to rock mining. The proceeds of the water treatment plant upgrade fee deposited into the Lake Belt Mitigation Trust Fund shall be used solely to pay for seepage mitigation projects, including groundwater or surface water management structures designed to improve wetland habitat and approved by the Lake Belt Mitigation Committee. The proceeds of the water treatment plant upgrade fee which are transmitted to a trust fund established by Miami-Dade County shall be used to upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County. As used in this section, the terms "upgrade a water treatment plant" or "treatment plant upgrade" mean those works necessary to treat or filter a surface water source or supply or both.

(b) Expenditures of the mitigation fee must be approved by an interagency committee consisting of representatives from each of the following: the Miami-Dade County Department of Environmental Resource Management, the Department of Environmental Protection, the South Florida Water Management District, and the Fish and Wildlife Conservation Commission. In addition, the limerock mining industry shall select a representative to serve as a nonvoting member of the interagency committee. At the discretion of the committee, additional members may be added to represent federal regulatory, environmental, and fish and wildlife agencies.

(7) Payment of the mitigation fee imposed by this section satisfies the mitigation requirements imposed under ss. 373.403-373.439 and any applicable county ordinance for loss of the value and functions from mining of the wetlands identified as rock mining supported and allowable areas of the Miami-Dade County Lake Belt Plan adopted by s. 373.4149(1). In addition, it is the intent of the Legislature that the payment of the mitigation fee imposed by this section satisfy all federal mitigation requirements for the wetlands mined.

(8)(a) The interagency committee established in this section shall annually prepare and submit to the governing board of the South Florida Water Management District a report evaluating the mitigation costs and revenues

generated by the mitigation fee.

(b) No sooner than January 31, 2010, and no more frequently than every 2 years thereafter, the interagency committee shall submit to the Legislature a report recommending any needed adjustments to the mitigation fee, including the annual escalator provided for in subsection (5), to ensure that the revenue generated reflects the actual costs of the mitigation.

(9)(a) The Legislature finds that more than 1,000 water samples from quarry lakes and groundwater sources near the Northwest Wellfield have been analyzed without a single detection of pathogens. The Legislature further finds that the best available science indicates that there is no connection between the quarry lakes in the Miami-Dade County Lake Belt and any potential need to upgrade the water treatment plant that receives water from the Northwest Wellfield for pathogen removal and none is expected in the future.

(b) To assist the Legislature in determining whether a portion of the limestone mining fee should be dedicated to a treatment plant upgrade through July 1, 2018, pursuant to subsection (2), Miami-Dade County shall:

1. By January 15, 2016, submit to the President of the Senate and the Speaker of the House of Representatives a detailed accounting of the Lake Belt fees collected through June 30, 2015, and all expenditures of those fees; and

2. By January 15, 2017, submit to the President of the Senate and the Speaker of the House of Representatives a detailed report on all pathogen data collection and analyses related to the Northwest Wellfield and the planning and engineering studies undertaken to upgrade any water treatment plant to provide treatment for pathogens in water from the Northwest Wellfield.

History.—s. 2, ch. 99-298; s. 23, ch. 2000-197; s. 2, ch. 2006-13; s. 32, ch. 2010-205; s. 36, ch. 2010-225; s. 1, ch. 2012-107; s. 2, ch. 2015-141; s. 39, ch. 2016-10.

373.41495 Lake Belt Mitigation Trust Fund; bonds.—

(1) The Lake Belt Mitigation Trust Fund is hereby created, to be administered by the South Florida Water Management District. Funds shall be credited to the trust fund as provided in s. 373.41492, to be used for the purposes set forth therein.

(2) The South Florida Water Management District may issue revenue bonds pursuant to s. 373.584, payable from revenues from the Lake Belt Mitigation fee imposed under s. 373.41492.

(3) Net proceeds from the Lake Belt Mitigation fee and any revenue bonds issued under subsection (2) shall be deposited into the trust fund and, together with any interest earned on such moneys, shall be applied to Lake Belt mitigation projects as provided in s. 373.41492.

(4) The Lake Belt Mitigation Trust Fund is a trust fund as described in s. 19(f)(3), Art. III of the State Constitution, and therefore is not subject to termination pursuant to s. 19(f)(2), Art. III of the State Constitution.

History.—ss. 1, 2, 3, 4, ch. 98-260; s. 1, ch. 99-297; s. 4, ch. 2015-141.

373.415 Protection zones; duties of the St. Johns River Water Management District.—

(1) Not later than November 1, 1988, the St. Johns River Water Management District shall adopt rules establishing protection zones adjacent to the watercourses in the Wekiva River System, as designated in s. 369.303(10). Such protection zones shall be sufficiently wide to prevent harm to the Wekiva River System, including water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent wildlife species, caused by any of the activities regulated under this part. Factors on which the widths of the protection zones shall be based shall include, but not be limited to:

(a) The biological significance of the wetlands and uplands adjacent to the designated watercourses in the Wekiva River System, including the nesting, feeding, breeding, and resting needs of aquatic species and wetland-dependent wildlife species.

(b) The sensitivity of these species to disturbance, including the short-term and long-term adaptability to disturbance of the more sensitive species, both migratory and resident.

(c) The susceptibility of these lands to erosion, including the slope, soils, runoff characteristics, and vegetative cover.

In addition, the rules may establish permitting thresholds, permitting exemptions, or general permits, if such thresholds, exemptions, or general permits do not allow significant adverse impacts to the Wekiva River System to occur individually or cumulatively.

(2) Notwithstanding the provisions of s. 120.60, the St. Johns River Water Management District shall not issue any permit under this part within the Wekiva River Protection Area, as defined in s. 369.303(9), until the appropriate local government has provided written notification to the district that the proposed activity is consistent with the local comprehensive plan and is in compliance with any land development regulation in effect in the area where the development will take place. The district may, however, inform any property owner who makes a request for such information as to the location of the protection zone or zones on his or her property. However, if a development proposal is amended as the result of the review by the district, a permit may be issued prior to the development proposal being returned, if necessary, to the local government for additional review.

(3) Nothing in this section shall affect the authority of the water management districts created by this chapter to adopt similar protection zones for other watercourses.

(4) Nothing in this section shall affect the authority of the water management districts created by this chapter to decline to issue permits for development which have not been determined to be consistent with local comprehensive plans or in compliance with land development regulations in areas outside the Wekiva River Protection Area.

(5) Nothing in this section shall affect the authority of counties or municipalities to establish setbacks from any surface waters or watercourses.

(6) The provisions of s. 373.617 are applicable to final actions of the St. Johns River Water Management District with respect to a permit or permits issued pursuant to this section.

History.—s. 2, ch. 88-121; s. 27, ch. 88-393; s. 606, ch. 95-148; s. 12, ch. 2000-212.

373.416 Permits for maintenance or operation.—

(1) Except for the exemptions set forth in this part, the governing board or department may require such permits and impose such reasonable conditions as are necessary to assure that the operation or maintenance of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the provisions of this part and applicable rules promulgated thereto, will not be inconsistent with the overall objectives of the district, and will not be harmful to the water resources of the district.

(2) Except as otherwise provided in ss. 373.426 and 373.429, a permit issued by the governing board or department for the maintenance or operation of a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works shall be permanent, and the sale or conveyance of such dam, impoundment, reservoir, appurtenant work, or works, or the land on which the same is located, shall in no way affect the validity of the permit, provided the owner in whose name the permit was granted notifies the governing board or department of such change of ownership within 30 days of such transfer.

(3) The governing boards shall, by November 1, 1990, establish by rule requirements for the monitoring and maintenance of stormwater management systems.

History.—s. 5, part IV, ch. 72-299; s. 20, ch. 73-190; s. 14, ch. 89-279.

373.417 Citation of rule.— In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

History.—s. 6, ch. 79-161.

373.418 Rulemaking; preservation of existing authority.—

(1) It is the intent of the Legislature that stormwater management systems be regulated under this part incorporating all of existing requirements contained in or adopted pursuant to this chapter and chapter 403. Neither the department nor governing boards are limited or prohibited from amending any regulatory requirement applicable to stormwater management systems in accordance with the provisions of this part. It is further the intent of the

Legislature that all current exemptions under this chapter and chapter 403 shall remain in full force and effect and that this act shall not be construed to remove or alter these exemptions.

(2) In order to preserve existing requirements, all rules of the department or governing boards existing on July 1, 1989, except for rule 17-25.090, Florida Administrative Code, shall be applicable to stormwater management systems and continue in full force and effect unless amended or replaced by future rulemaking in accordance with this part.

(3) The department or governing boards have authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part. Such rules shall be consistent with the water resource implementation rule and shall not allow harm to water resources or be contrary to the policy set forth in s. 373.016.

(4) The department or the governing boards are authorized to adopt by rule performance criteria for the review of groundwater discharge of stormwater. Upon adoption of such performance criteria the department shall not require a separate groundwater permit for permitted stormwater facilities.

History.—s. 15, ch. 89-279; s. 22, ch. 97-160; s. 86, ch. 98-200.

373.4185 List of flocculants permitted.— The Department of Environmental Protection may develop and maintain a list of the flocculants that it has permitted to be used under part IV of this chapter. The list may include information concerning any associated testing to determine compliance with state permitting standards and information on application rates and methods. Publication of this list is not a rule under chapter 120. This section does not prevent an entity from proposing or the department from approving the use of a flocculant that is not on the department's list subject to the entity providing the necessary documentation required by the department to ensure that the use of the flocculant will not cause harm to the water resources of the state.

History.—s. 5, ch. 2008-40.

373.419 Completion report.— Within 30 days after the completion of construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, the permittee shall file a written statement of completion with the governing board or department. The governing board or department shall designate the form of such statement and such information as it shall require.

History.—s. 6, part IV, ch. 72-299; s. 16, ch. 89-279.

373.421 Delineation methods; formal determinations.—

(1) The Environmental Regulation Commission shall adopt a unified statewide methodology for the delineation of the extent of wetlands as defined in s. 373.019(27). This methodology shall consider regional differences in the types of soils and vegetation that may serve as indicators of the extent of wetlands. This methodology shall also include provisions for determining the extent of surface waters other than wetlands for the purposes of regulation under s. 373.414. This methodology shall not become effective until ratified by the Legislature. Subsequent to legislative ratification, the wetland definition in s. 373.019(27) and the adopted wetland methodology shall be binding on the department, the water management districts, local governments, and any other governmental entities. Upon ratification of such wetland methodology, the Legislature preempts the authority of any water management district, state or regional agency, or local government to define wetlands or develop a delineation methodology to implement the definition and determines that the exclusive definition and delineation methodology for wetlands shall be that established pursuant to s. 373.019(27) and this section. Upon such legislative ratification, any existing wetlands definition or wetland delineation methodology shall be superseded by the wetland definition and delineation methodology established pursuant to this chapter. Subsequent to legislative ratification, a delineation of the extent of a surface water or wetland by the department or a water management district, pursuant to a formal determination under subsection (2), or pursuant to a permit issued under this part in which the delineation was field-verified by the permitting agency and specifically approved in the permit, shall be binding on all other governmental entities for the duration of the formal determination or permit. All existing rules and methodologies of the department, the water management districts, and local governments, regarding surface water or wetland definition and delineation shall remain in full force and effect until the common methodology rule becomes effective. However, this shall not be construed to limit any power of the department, the water management districts, and local governments to amend or

adopt a surface water or wetland definition or delineation methodology until the common methodology rule becomes effective.

(2) A water management district or the department may provide a process by rule for formal determinations of the extent of surface waters and wetlands, as delineated in subsection (1). By interagency agreement, the department and each water management district shall determine which agency shall implement the determination process within the district. If a rule is adopted, a property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in property may petition the district for a formal determination. In such rule, the governing board or the department shall specify information which must be provided and may require authorization to enter upon the property. The rule shall also establish procedures for issuing a formal determination. The governing board may authorize its executive director to issue formal determinations. The governing board must by rule prescribe the circumstances in which its executive director may issue such determinations. The governing board or the department may require a fee to cover the costs of processing and acting upon the petition. That fee must be established by rule. A water management district or the department may publish, or require the petitioner to publish at the petitioner's expense, notice of the intended agency action on the petition for a formal determination in a newspaper of general circulation within the affected area. Within 60 days prior to the expiration of a formal determination, the property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in the property may petition for a new formal determination for the same parcel of property and such determination shall be issued, approving the same extent of surface waters and wetlands in the previous formal determination, as long as physical conditions on the property have not changed, other than changes which have been authorized by a permit pursuant to this part, so as to alter the boundaries of surface waters or wetlands and the methodology for determining the extent of surface waters and wetlands authorized by subsection (1) has not been amended since the previous formal determination. The application fee for such a subsequent petition shall be less than the application fee for the original determination.

(3) A formal determination is binding for a period not to exceed 5 years as long as physical conditions on the property do not change, other than changes which have been authorized by a permit pursuant to this part, so as to alter the boundaries of surface waters or wetlands, as delineated in subsection (1).

(4) The governing board or the department may revoke a formal determination if it finds that the petitioner has submitted inaccurate information to the district.

(5) A formal determination obtained under this section is final agency action and is in lieu of a declaratory statement of jurisdiction obtainable under s. 120.565. Sections 120.569 and 120.57 apply to formal determinations under this section.

(6) The district or the department may also issue nonbinding informal determinations or otherwise institute determinations on its own initiative as provided by law. A nonbinding informal determination of the extent of surface waters and wetlands issued by the South Florida Water Management District or the Southwest Florida Water Management District, between July 1, 1989, and the effective date of the methodology ratified in s. 373.4211, shall be validated by the district if a petition to validate the nonbinding informal determination is filed with the district on or before October 1, 1994, provided:

(a) The petitioner submits the documentation prepared by the agency, and signed by an agency employee in the course of the employee's official duties, at the time the nonbinding informal determination was issued, showing the boundary of the surface waters or wetlands;

(b) The request is accompanied by the appropriate fee in accordance with the fee schedule established by district rule;

(c) Any supplemental information, such as aerial photographs and soils maps, is provided as necessary to ensure an accurate determination;

(d) District staff verify the delineated surface water or wetland boundary through site inspection; and

(e) Following district verification, and adjustment if necessary, of the boundary of surface waters or wetlands, the petitioner submits a survey certified pursuant to chapter 472, which depicts the surface water or wetland boundaries. The certified survey shall contain a legal description of, and the acreage contained within, the boundaries of the

property for which the determination is sought. The boundaries must be witnessed to the property boundaries and must be capable of being mathematically reproduced from the survey.

Validated informal nonbinding determinations issued by the South Florida Water Management District and the Southwest Florida Water Management District shall remain valid for a period of 5 years from the date of validation by the district, as long as physical conditions on the property do not change so as to alter the boundaries of surface waters or wetlands. A validation obtained under this section is final agency action. Sections 120.569 and 120.57 apply to validations under this section.

(7)(a) This subsection is intended to restore qualified developments to their pre-Henderson Wetland Protection Act status for contiguous wetlands. This provision will therefore streamline state wetland permitting without loss of wetland protection by other governmental entities.

(b) Wetlands contiguous to surface waters of the state as defined in s. 403.031(13), Florida Statutes (1991), shall be delineated pursuant to the department's rules as such rules existed prior to January 24, 1984, while wetlands not contiguous to surface waters of the state as defined in s. 403.031(13), Florida Statutes (1991), shall be delineated pursuant to the applicable methodology ratified by s. 373.4211 for any development which obtains an individual permit from the United States Army Corps of Engineers under 33 U.S.C. s. 1344:

1. Where a jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in rule 17-4.022, Florida Administrative Code, on April 1, 1985, is revalidated pursuant to s. 373.414(13) and the affected lands are part of a project for which a vested rights determination has been issued pursuant to s. 380.06, or

2. Where the lands affected were grandfathered pursuant to s. 403.913(6), Florida Statutes (1991), and proof of prior notification pursuant to s. 403.913(6), Florida Statutes (1991), is submitted to the department within 180 days of the publication of a notice by the department of the existence of this provision. Failure to timely submit the proof of prior notification to the department serves as a waiver of the benefits conferred by this subsection.

3. This subsection shall not be applicable to lands:

a. Within the geographical area to which an individual or general permit issued prior to June 1, 1994, under rules adopted pursuant to this part applies; or

b. Within the geographical area to which a conceptual permit issued prior to June 1, 1994, under rules adopted pursuant to this part applies if wetland delineations were identified and approved by the conceptual permit as set forth in s. 373.414(12)(b)1. or 2.; or

c. Where no development activity as defined in [1]s. 380.01(1) or (2)(a)-(d) and (f) has occurred within the project boundaries since October 1, 1986; or

d. Of a project which is not in compliance with this part or the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended.

4. The wetland delineation methodology required in this subsection shall only apply within the geographical area of an individual permit issued by the United States Army Corps of Engineers under 33 U.S.C. s. 1344. The requirement to obtain such individual permit to secure the benefit of this subsection shall not apply to any activities exempt or not subject to regulation under 33 U.S.C. s. 1344.

5. Notwithstanding subsection (1), the wetland delineation methodology required in this subsection and any wetland delineation pursuant thereto, shall only apply to agency action under this part and shall not be binding on local governments except in their implementation of this part.

History.—s. 7, ch. 91-288; s. 31, ch. 93-213; ss. 6, 18, ch. 94-122; s. 100, ch. 96-410; s. 10, ch. 98-88; s. 170, ch. 99-13; s. 41, ch. 2006-1; s. 5, ch. 2012-150.

[1]**Note.**—Section 380.01 was transferred to s. 381.492 by the reviser in 1969; it was further redesignated as s. 381.0605 by s. 52, ch. 91-297. Section 381.0605 was repealed by s. 54, ch. 2012-184.

373.4211 Ratification of chapter 17-340, Florida Administrative Code, on the delineation of the landward extent of wetlands and surface waters.—Pursuant to s. 373.421, the Legislature ratifies chapter 17-340, Florida

Administrative Code, approved on January 13, 1994, by the Environmental Regulation Commission, with the following changes:

(1) The last sentence of rule 17-340.100(1), Florida Administrative Code, is changed to read: "The methodology shall not be used to delineate areas which are not wetlands as defined in subsection 17-340.200(19), F.A.C., nor to delineate as wetlands or surface waters areas exempted from delineation by statute or agency rule."

(2) The introductory paragraph of rule 17-340.300, Florida Administrative Code, is changed to read: "The landward extent (i.e., the boundary) of wetlands as defined in subsection 17-340.200(19), F.A.C., shall be determined by applying reasonable scientific judgment to evaluate the dominance of plant species, soils, and other hydrologic evidence of regular and periodic inundation and saturation as set forth below. In applying reasonable scientific judgment, all reliable information shall be evaluated in determining whether the area is a wetland as defined in subsection 17-340.200(19), F.A.C."

(3) The introductory paragraph of rule 17-340.300(2), Florida Administrative Code, is changed to read: "The landward extent of a wetland as defined in subsection 17-340.200(19), F.A.C., shall include any of the following areas:"

(4) Rule 17-340.300(2)(a), Florida Administrative Code, is changed to read:

"(a) Those areas where the areal extent of obligate plants in the appropriate vegetative stratum is greater than the areal extent of all upland plants in that stratum, as identified using the method in section 17-340.400, F.A.C., and either:

"1. The substrate is composed of hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance;

"2. The substrate is nonsoil, rock outcrop-soil complex, or is located within an artificially created wetland area, or

"3. One or more of the hydrologic indicators listed in section 17-340.500, F.A.C., are present and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C."

(5) Rule 17-340.300(2)(b), Florida Administrative Code, is changed to read:

"(b) Those areas where the areal extent of obligate or facultative wet plants, or combinations thereof, in the appropriate stratum is equal to or greater than 80 percent of all the plants in that stratum, excluding facultative plants, and either:

"1. The substrate is comprised of hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance;

"2. The substrate is nonsoil, rock outcrop-soil complex, or is located within an artificially created wetland area; or

"3. One or more of the hydrologic indicators listed in section 17-340.500, F.A.C., are present and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C."

(6) Rule 17-340.300(2)(c), Florida Administrative Code, is deleted.

(7) Rule 17-340.300(2)(d), Florida Administrative Code, is changed to read:

"(c) Those areas, other than pine flatwoods and improved pastures, with undrained hydric soils which meet, in situ, at least one of the criteria listed below. A hydric soil is considered undrained unless reasonable scientific

judgment indicates permanent artificial alterations to the onsite hydrology have resulted in conditions which would not support the formation of hydric soils.

"1. Soil classified according to United States Department of Agriculture's Keys to Soil Taxonomy (4th ed. 1990) as Umbraqualfs, Sulfaquents, Hydraquents, Humaquepts, Histosols (except Folists), Argiaquolls, or Umbraquults.

"2. Saline sands (salt flats-tidal flats).

"3. Soil within a hydric mapping unit designated by the U.S.D.A.-S.C.S. as frequently flooded or depressional, when the hydric nature of the soil has been field verified using the U.S.D.A.-S.C.S. approved hydric soil indicators for Florida. If a permit applicant, or a person petitioning for a formal determination pursuant to subsection 373.421(2), F.S., disputes the boundary of a frequently flooded or depressional mapping unit, the applicant or petitioner may request that the regulating agency, in cooperation with the U.S.D.A.-S.C.S., confirm the boundary. For the purposes of section 120.60, F.S., a request for a boundary confirmation pursuant to this subparagraph shall have the same effect as a timely request for additional information by the regulating agency. The regulating agency's receipt of the final response provided by the U.S.D.A.-S.C.S. to the request for boundary confirmation shall have the same effect as a receipt of timely requested additional information.

"4. For the purposes of this paragraph only, 'pine flatwoods' means a plant community type in Florida occurring on flat terrain with soils which may experience a seasonable high water table near the surface. The canopy species consist of a monotypic or mixed forest of long leaf pine or slash pine. The subcanopy is typically sparse or absent. The ground cover is dominated by saw palmetto with areas of wire grass, gallberry, and other shrubs, grasses, and forbs, which are not obligate or facultative wet species. Pine flatwoods do not include those wetland communities as listed in the wetland definition contained in subsection 17-340.200(19) which may occur in the broader landscape setting of pine flatwoods and which may contain slash pine. Also for the purposes of this paragraph only, 'improved pasture' means areas where the dominant native plant community has been replaced with planted or natural recruitment of herbaceous species which are not obligate or facultative wet species and which have been actively maintained for livestock through mechanical means or grazing."

(8) Rule 17-340.300(2)(e), Florida Administrative Code, is changed to read:

"(d) Those areas where one or more of the hydrologic indicators listed in section 17-340.500, F.A.C., are present, and which have hydric soils, as identified using the U.S.D.A.-S.C.S. approved hydric soil indicators for Florida, and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C. These areas shall not extend beyond the seasonal high water elevation."

(9) Rule 17-340.300(2)(f), Florida Administrative Code, is deleted.

(10) Rule 17-340.300(3), Florida Administrative Code, is added to read:

"(3)(a) If the vegetation or soils of an upland or wetland area have been altered by natural or human-induced factors such that the boundary between wetlands and uplands cannot be delineated reliably by use of the methodology in subsection 17-340.300(2), F.A.C., as determined by the regulating agency, and the area has hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance, then the most reliable available information shall be used with reasonable scientific judgment to determine where the methodology in subsection 17-340.300(2), F.A.C., would have delineated the boundary between wetlands and uplands. Reliable available information may include, but is not limited to, aerial photographs, remaining vegetation, authoritative site-specific documents, or topographical consistencies.

"(b) This subsection shall not apply to any area where regional or site-specific permitted activities, or activities which did not require a permit, under sections 253.123 and 253.124, F.S. (1957), as subsequently amended, the

provisions of Chapter 403, F.S. (1983), relating to dredging and filling activities, Chapter 84-79, Laws of Florida, and Part IV of Chapter 373, F.S., have altered the hydrology of the area to the extent that reasonable scientific judgment, or application of the provisions of section 17-340.550, F.A.C., indicate that under normal circumstances the area no longer inundates or saturates at a frequency and duration sufficient to meet the wetland definition in subsection 17-340.200(19), F.A.C.

"(c) This subsection shall not be construed to limit the type of evidence which may be used to delineate the landward extent of a wetland under this chapter when an activity violating the regulatory requirements of sections 253.123 and 253.124, F.S. (1957), as subsequently amended, the provisions of Chapter 403, F.S. (1983), relating to dredging and filling activities, Chapter 84-79, Laws of Florida, and Part IV of Chapter 373, F.S., has disturbed the vegetation or soils of an area."

(11) Rule 17-340.300(4), Florida Administrative Code, is created to read:

"17-340.300(4) The regulating agency shall maintain sufficient soil scientists on staff to provide evaluation or consultation regarding soil determinations in applying the methodologies set forth in subsections 17-340.300(2) or (3), F.A.C. Services provided by the U.S.D.A.-S.C.S., or other competent soil scientists, under contract or agreement with the regulating agency, may be used in lieu of, or to augment, agency staff."

(12) Rule 17-340.400, Florida Administrative Code, is changed to read:

"17-340.400 Selection of Appropriate Vegetative Stratum.

"Dominance of plant species, as described in paragraphs 17-340.300(2)(a) and 17-340.300(2)(b), shall be determined in a plant stratum (canopy, subcanopy, or ground cover). The top stratum shall be used to determine dominance unless the top stratum, exclusive of facultative plants, constitutes less than 10 percent areal extent, or unless reasonable scientific judgment establishes that the indicator status of the top stratum is not indicative of the hydrologic conditions on site. In such cases, the stratum most indicative of onsite hydrologic conditions, considering the seasonable variability in the amount and distribution of rainfall, shall be used. The evidence concerning the presence or absence of regular and periodic inundation or saturation shall be based on in situ data. All facts and factors relating to the presence or absence of regular and periodic inundation or saturation shall be weighed in deciding whether the evidence supports shifting to a lower stratum. The presence of obligate, facultative wet, or upland plants in a lower stratum does not by itself constitute sufficient evidence to shift strata, but can be considered along with other physical data in establishing the weight of evidence necessary to shift to a lower stratum. The burden of proof shall be with the party asserting that a stratum other than the top stratum should be used to determine dominance. Facultative plants shall not be considered for purposes of determining appropriate strata or dominance."

(13) Rule 17-340.450(1), Florida Administrative Code, is changed by deletion of the following plant species: *Habenaria repens, Schoenus nigricans,* and *Ulmus americana.*

(14) Rule 17-340.450(2), Florida Administrative Code, is changed by deletion of the following plant species: *Bucida buceras, Bumelialycioides, Conoclinium coelestinum, Coreopsis tripteris, Erithralis fruticosa, Eryngium baldwini, Eustachys petracea, Helianthus floridanus, Muhlenbergia expansa, Myrsine quianensis, Peperomia floridana, Scutellaria floridana, Scutellaria integrifolia, Stillingia sylvatica var. tenuis, Tripsacum dactyloides, Verbesina virginica,* and *Wisteria frutescens, Aletris spp., Alopecurus carolinianus, Carphephorus odoratissimus, Carphephorus paniculata, Chasmanthium spp., Elytraria caroliniensis, Euthamia spp., Flaveria spp., Gratiola spp., Habenaria spp.* except *Habenaria repens* (OBL), *Hibiscus tiliaceus, Ilex opaca var. opaca, Lilium catesbaei, Metopium toxiferum, Morus rubra, Nephrolepis spp., Oplismenus setarius, Panicum tenue, Vaccinium elliotti, Fimbristylis spathacea, Guapira discolor, Jacquinia keyensis, Morinda royoc, Schizachyrium maritimum, Schizachyrium rhizomatum, Strumpfia maritima, Baccharis glomeruliflora, Lachnanthes caroliniana, Liatris spicata, Lyonia ligustrina, Michella repens, Sambucus conadensis, Sebastiana fruticosa,* and *Setaria geniculata.*

(15) Rule 17-340.450(2) is changed by adding the following species: *Chasmanthium spp.* except *Chasmanthium latifolum* (FAC) and *Chasmanthium sessiliflorum* (FAC), *Flaveria floridana, Flaveria linearis, Gratiola spp.* except *Gratiola*

hispida (FAC), and *Habenaria spp., Schoenus nigricans*, and *Ulmus americana.*

(16) Rule 17-340.450(2) is amended by adding, after the species list, the following language:

"Within Monroe County and the Key Largo portion of Miami-Dade County only, the following species shall be listed as Facultative Wet: *Alternanthera maritima, Morinda royoc*, and *Strumpfia maritima.*"

(17) Rule 17-340.450(3) is changed by deleting the following species: *Bischofia javanica, Dioclea multiflora, Canella alba, Ernodea littoralis, Eugenia axillaris, Eugenia foeteda, Eugenia rhombea, Eugenia uniflora, Manilkara bahamensis, Musa spp., Pisonia rotundata, Psidium guajava, Randia aculeata,* and *Reynois septentrionalis, Terminalia catappa, Paspalum bifidum, Ligustrum spp.*, and *Urena lobata.*

(18) Rule 17-340.450(3) is changed by adding the following species: *Bucida buceras, Bumelia lycioides, Conoclinium coelestinum, Coreopsis tripteris, Erithralis fruticosa, Eryngium baldwini, Eustachys petracea, Helianthus floridanus, Muhlenbergia expansa, Myrsine quianensis, Scutellaria floridana, Scutellaria integrifolia, Stillingia sylvatica var. tenuis, Tripsacum dactyloides,* and *Verbesina virginica, Aletris spp., Alopecurus carolinianus, Carphephorus odoratissimus, Carphephorus paniculata, Chasmanthium latifolum, Chasmanthium sessiliflorum, Elytraria caroliniensis, Euthamia spp., Fimbristylis spathacea, Flaveria bidentis, Flaveria trinervia, Gratiola hispida, Heliotropium polyphyllum, Hibiscus tiliaceus, Ilex opaca var. opaca, Jacquinia keyensis, Lilium catesbaei, Metopium toxiferum, Morus rubra, Nephrolepis spp., Oplismenus setarius, Panicum tenue, Schizachyrium spp., Vaccinium elliotti, Baccharis glomeruliflora, Lachnanthes caroliniana, Liatrius spicata, Lyonia ligostrina, Sambucus canadensis, Sebastiana fruticosa,* and *Setaria geniculata.*

(19) Rule 17-340.450(3) is amended by adding, after the species list, the following language:

"Within Monroe County and the Key Largo portion of Miami-Dade County only, the following species shall be listed as facultative: *Alternanthera paronychioides, Byrsonima lucida, Ernodea littoralis, Guapira discolor, Marnilkara bahamensis, Pisonis rotundata, Pithecellobium keyensis, Pithecellobium unquis-cati, Randia aculeata, Reynosia septentrionalis,* and *Thrinax radiata.*"

(20) Rule 17-340.500, Florida Administrative Code, is changed to read: "The indicators below may be used as evidence of inundation or saturation when used as provided in section 17-340.300, F.A.C. Several of the indicators reflect a specific water elevation. These specific water elevation indicators are intended to be evaluated with meteorological information, surrounding topography, and reliable hydrologic data or analyses when provided, to ensure that such indicators reflect inundation or saturation of a frequency and duration sufficient to meet the wetland definition in subsection 17-340.200(19), F.A.C., and not rare or aberrant events. These specific water elevation indicators are not intended to be extended from the site of the indicator into surrounding areas when reasonable scientific judgment indicates that the surrounding areas are not wetlands as defined in subsection 17-340.200(19), F.A.C.

"(1) Algal mats. The presence or remains of nonvascular plant material which develops during periods of inundation and persists after the surface water has receded.

"(2) Aquatic mosses or liverworts on trees or substrates. The presence of those species of mosses or liverworts tolerant of or dependent on surface water inundation.

"(3) Aquatic plants. Defined in subsection 17-340.200(1), F.A.C.

"(4) Aufwuchs. The presence or remains of the assemblage of sessile, attached, or free-living, nonvascular plants and invertebrate animals (including protozoans) which develop a community on inundated surfaces.

"(5) Drift lines and rafted debris. Vegetation, litter, and other natural or manmade material deposited in discrete lines or locations on the ground or against fixed objects, or entangled above the ground within or on fixed objects in a form and manner which indicates that the material was waterborne. This indicator should be used with caution to ensure that the drift lines or rafted debris represent usual and recurring events typical of inundation or saturation at a frequency and duration sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C.

"(6) Elevated lichen lines. A distinct line, typically on trees, formed by the water-induced limitation on the growth of lichens.

"(7) Evidence of aquatic fauna. The presence or indications of the presence of animals which spend all or portions of their life cycle in water. Only those life stages which depend on being in or on water for daily survival are included in this indicator.

"(8) Hydrologic data. Reports, measurements, or direct observation of inundation or saturation which support the presence of water to an extent consistent with the provisions of the definition of wetlands and the criteria within this rule, including evidence of a seasonal high water table at or above the surface according to methodologies set forth in Soil and Water Relationships of Florida's Ecological Communities (Florida Soil Conservation Staff 1992).

"(9) Morphological plant adaptations. Specialized structures or tissues produced by certain plants in response to inundation or saturation, which normally are not observed when the plant has not been subject to conditions of inundation or saturation.

"(10) Secondary flow channels. Discrete and obvious natural pathways of water flow landward of the primary bank of a stream watercourse and typically parallel to the main channel.

"(11) Sediment deposition. Mineral or organic matter deposited in or shifted to positions indicating water transport.

"(12) Vegetated tussocks or hummocks. Areas where vegetation is elevated above the natural grade on a mound built up of plant debris, roots, and soils so that the growing vegetation is not subject to the prolonged effects of soil anoxia.

"(13) Water marks. A distinct line created on fixed objects, including vegetation, by a sustained water elevation."

(21) Rule 17-340.600(2)(e), Florida Administrative Code, is changed to read:

"(e) the seasonal high-water line for artificial lakes, borrow pits, canals, ditches, and other artificial water bodies with side slopes flatter than 1 foot vertical to 4 feet horizontal along with any artificial water body created by diking or impoundment above the ground."

(22) The first sentence of subsection (1) and paragraphs (1)(a) and (b) of rule 17-340.700, Florida Administrative Code, are changed to read:

"(1) Alteration and maintenance of the following shall be exempt from the rules adopted by the department and the water management districts to implement subsections 373.414(1) through 373.414(6), 373.414(8), and 373.414(10), F.S.; and subsection 373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to section 373.414, F.S. (1991):

"(a) Works, impoundments, reservoirs, and other watercourses constructed and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under sections 17-28.700, 17-302.520, F.A.C., Chapters 17-17, 17-600, 17-610, 17-640, 17-650, 17-660, 17-670, 17-671, 17-673, 17-701, F.A.C., or section 403.0885, F.S., or rules implementing section 403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 17-611, F.A.C., or section 403.0885, F.S., or its implementing rules;

"(b) Works, impoundments, reservoirs, and other watercourses constructed solely for wastewater treatment or disposal before a construction permit was required under Chapter 403, F.S., and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under sections 17-28.700, 17-302.520, F.A.C., Chapters 17-17, 17-600, 17-610, 17-640, 17-650, 17-660, 17-670, 17-671, 17-673, 17-701, F.A.C., or section 403.0885,

F.S., or rules implementing section 403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 17-611, F.A.C., or section 403.0885, F.S., or its implementing rules;"

(23) The first sentence of rule 17-340.700(2), Florida Administrative Code, is changed to read:

"(2) Alteration and maintenance of the following shall be exempt from the rules adopted by the department and the water management districts to implement subsections 373.414(1), 373.414(2)(a), 373.414(8), and 373.414(10), F.S.; and subsections 373.414(3) through 373.414(6), F.S.; and subsection 373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to section 373.414, F.S. (1991), except for authority to protect threatened and endangered species in isolated wetlands:"

(24) Rule 17-340.700(7), Florida Administrative Code, is changed to read:

"(7) As used in this subsection, 'solely for' means the reason for which a work, impoundment, reservoir, or other watercourse is constructed and operated; and such construction and operation would not have occurred but for the purposes identified in subsection 17-340.700(1) or subsection 17-340.700(2), F.A.C. Furthermore, the phrase does not refer to a work, impoundment, reservoir, or other watercourse constructed or operated for multiple purposes. Incidental uses, such as occasional recreational uses, will not render the exemption inapplicable, so long as the incidental uses are not part of the original planned purpose of the work, impoundment, reservoir, or other watercourse. However, for those works, impoundments, reservoirs, or other watercourses described in paragraphs 17-340.700(1)(c) and 17-340.700(2)(a), F.A.C., use of the system for flood attenuation, whether originally planned or unplanned, shall be considered an incidental use, so long as the works, impoundments, reservoirs, and other watercourses are no more than 2 acres larger than the minimum area required to comply with the stormwater treatment requirements of the district or department. For the purposes of this subsection, reuse from a work, impoundment, reservoir, or other watercourse is part of treatment or disposal."

(25) The first sentence of rule 17-340.750, Florida Administrative Code, is changed to read:

"17-340.750 Exemption for Surface Waters or Wetlands Created by Mosquito Control Activities.

"Construction, alteration, operation, maintenance, removal, and abandonment of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, or works, in, on, or over lands that have become surface waters or wetlands solely because of mosquito control activities undertaken as part of a governmental mosquito control program, and which lands were neither surface waters nor wetlands before such activities, shall be exempt from the rules adopted by the department and water management districts to implement subsections 373.414(1) through 373.414(6), 373.414(8), and 373.414(10), F.S.; and subsection 373.414(7), F.S., regarding any authority granted pursuant to section 373.414, F.S. (1991):"

(26) Any future amendments to chapter 17-340, Florida Administrative Code, shall be submitted in bill form to the Speaker of the House of Representatives and to the President of the Senate for their consideration and referral to the appropriate committees. Such chapter amendments shall become effective only upon approval by act of the Legislature.

History.—s. 1, ch. 94-122; s. 101, ch. 96-410; s. 46, ch. 97-96; s. 85, ch. 2008-4.

373.422 Applications for activities on state sovereignty lands or other state lands.— If sovereignty lands or other lands owned by the state are the subject of a proposed activity, the issuance of a permit by the department or a water management district must be conditioned upon the receipt by the applicant of all necessary approvals and authorizations under chapters 253 and 258 before the undertaking of the activity. The department or the governing board must issue its permit conditioned upon the securing of the necessary consent or approvals by the applicant. Once the department has adopted rules under s. 373.427 for concurrent review of applications for permits under this part and proprietary authorizations under chapters 253 and 258 to use submerged lands, the permitting conditions

required under this section cease to apply to those applications. If the approval or authorization of the board is required, the applicant may not commence any excavation, construction, or other activity until the approval or authorization has been issued.

History.—s. 32, ch. 93-213; s. 503, ch. 94-356.

373.423 Inspection.—

(1) During the construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, the governing board or department pursuant to s. 403.091 shall make at its expense such periodic inspections as it deems necessary to ensure conformity with the approved plans and specifications included in the permit.

(2) If during construction or alteration the governing board or department finds that the work is not being done in accordance with the approved plans and specifications as indicated in the permit, it shall give the permittee written notice stating with which particulars of the approved plans and specifications the construction is not in compliance and shall order immediate compliance with such plans and specifications. The failure to act in accordance with the orders of the governing board or department after receipt of written notice shall result in the initiation of revocation proceedings in accordance with s. 373.429.

(3) Upon completion of the work, the executive director of the district or the Department of Environmental Protection or its successor agency shall have periodic inspections made of permitted stormwater management systems, dams, reservoirs, impoundments, appurtenant work, or works to protect the public health and safety and the natural resources of the state. No person shall refuse immediate entry or access to any authorized representative of the governing board or the department who requests entry for purposes of such inspection and presents appropriate credentials.

History.—s. 7, part IV, ch. 72-299; s. 21, ch. 73-190; s. 48, ch. 79-65; s. 13, ch. 84-341; s. 17, ch. 89-279; s. 269, ch. 94-356.

373.426 Abandonment.—

(1) Any owner of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works wishing to abandon or remove such work may first be required by the governing board or the department to obtain a permit to do so and may be required to meet such reasonable conditions as are necessary to assure that such abandonment will not be inconsistent with the overall objectives of the district.

(2) Where any permitted stormwater management system, dam, impoundment, reservoir, appurtenant work, or works is not owned nor directly controlled by the state or any of its agencies and is not used nor maintained under the authority of the owner for a period of 3 years, it shall be presumed that the owner has abandoned such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, and has dedicated the same to the district for the use of the people of the district.

(3) The title of the district to any such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be established and determined in the court appointed by statute to determine the title to real estate.

History.—s. 8, part IV, ch. 72-299; s. 22, ch. 73-190; s. 18, ch. 89-279.

373.427 Concurrent permit review.—

(1) The department, in consultation with the water management districts, may adopt procedural rules requiring concurrent application submittal and establishing a concurrent review procedure for any activity regulated under this part that also requires any authorization, permit, waiver, variance, or approval described in paragraphs (a)-(d). The rules must address concurrent review of applications under this part and any one or more of the authorizations, permits, waivers, variances, and approvals described in paragraphs (a)-(d). Applicants that propose such activities must submit, as part of the permit application under this part, all information necessary to satisfy the requirements for:

(a) Proprietary authorization under chapter 253 or chapter 258 to use submerged lands owned by the board of trustees;

(b) Coastal construction permits under s. 161.041;

(c) Coastal construction control line permits under s. 161.053; and

(d) Waiver or variance of the setback requirements under s. 161.052.

The rules adopted under this section may also require submittal of such information as is necessary to determine whether the proposed activity will occur on submerged lands owned by the board of trustees. Notwithstanding s. 120.60, an application under this part is not complete and the timeframes for license approval or denial shall not commence until all information required by rules adopted under this section is received. For applications concurrently reviewed under this section, the agency that conducts the concurrent application review shall issue a notice of consolidated intent to grant or deny the applicable authorizations, permits, waivers, variances, and approvals. The issuance of the notice of consolidated intent to grant or deny is deemed in compliance with s. 120.60 timeframes for license approval or denial on the concurrently processed applications for any required permit, waiver, variance, or approval under this chapter or chapter 161. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands. If an administrative proceeding pursuant to ss. 120.569 and 120.57 is timely requested, the case shall be conducted as a single consolidated administrative proceeding on all such concurrently processed applications. Once the rules adopted pursuant to this section become effective, they shall establish the concurrent review procedure for applications submitted to both the department and the water management districts, including those applications for categories of activities requiring authorization to use board of trustees-owned submerged lands for which the board of trustees has not delegated authority to take final agency action without action by the board of trustees.

(2) In addition to the provisions set forth in subsection (1) and notwithstanding s. 120.60, the procedures established in this subsection shall apply to concurrently reviewed applications which request proprietary authorization to use board of trustees-owned submerged lands for activities for which there has been no delegation of authority to take final agency action without action by the board of trustees.

(a) Unless waived by the applicant, within 90 days of receipt of a complete application, the department or water management district shall issue a recommended consolidated intent to grant or deny on all of the concurrently reviewed applications, and shall submit the recommended consolidated intent to the board of trustees for its consideration of the application to use board of trustees-owned submerged lands. The recommended consolidated intent shall not constitute a point of entry to request a hearing pursuant to ss. 120.569 and 120.57. Unless waived by the applicant, the board of trustees shall consider the board of trustees-owned submerged lands portion of the recommended consolidated intent at its next regularly scheduled meeting for which notice may be properly given, and the board of trustees shall determine whether the application to use board of trustees-owned submerged lands should be granted, granted with modifications, or denied. The board of trustees shall then direct the department or water management district to issue a notice of intent to grant or deny the application to use board of trustees-owned submerged lands. Unless waived by the applicant, within 14 days following the action by the board of trustees, the department or water management district shall issue a notice of consolidated intent to grant or deny on the application to use board of trustees-owned submerged lands, in accordance with the directions of the board of trustees, together with all of the concurrently reviewed applications.

(b) The timely issuance of a recommended consolidated intent to grant or deny as set forth in paragraph (a) is deemed in compliance with s. 120.60 timeframes for license approval or denial on the concurrently processed applications for any required permit, waiver, variance, or approval under this chapter or chapter 161. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands.

(c) Any petition for an administrative hearing pursuant to ss. 120.569 and 120.57 must be filed within 14 days of the notice of consolidated intent to grant or deny. Unless waived by the applicant, within 60 days after the recommended order is submitted, or at the next regularly scheduled meeting for which notice may be properly given, whichever is latest, the board of trustees shall determine what action to take on any recommended order issued under ss. 120.569 and 120.57 on the application to use board of trustees-owned submerged lands, and shall direct the department or water management district on what action to take in the final order concerning the application to use

board of trustees-owned submerged lands. The department or water management district shall determine what action to take on any recommended order issued under ss. 120.569 and 120.57 regarding any concurrently processed permits, waivers, variances, or approvals required by this chapter or chapter 161. The department or water management district shall then take final agency action by entering a consolidated final order addressing each of the concurrently reviewed authorizations, permits, waivers, or approvals. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands. Any provisions relating to authorization to use board of trustees-owned submerged lands shall be as directed by the board of trustees. Issuance of the consolidated final order within 45 days after receipt of the direction of the board of trustees regarding the application to use board of trustees-owned submerged lands is deemed in compliance with the timeframes for issuance of final orders under s. 120.60. The final order shall be subject to the provisions of s. 373.4275.

(3) After the effective date of rules adopted under this section, neither the department nor a water management district may issue a permit under this part unless the requirements for issuance of any additional required authorizations, permits, waivers, variances, and approvals set forth in this section which are subject to concurrent review are also satisfied.

(4) When both an environmental resource permit or dredge and fill permit and a waiver, or variance set forth in paragraphs (1)(b)-(d) are granted in a consolidated order, these permits shall be consolidated into a single permit to be known as a joint coastal permit.

(5) Any application fee required under s. 373.109 for a permit under this part is in addition to any fees required for any of the concurrently reviewed applications for authorizations, permits, waivers, variances, or approvals set forth in subsection (1) or subsection (2). The application fees must be allocated, deposited, and used as provided in s. 373.109.

(6) Whenever a concurrently processed application includes an application to use board of trustees-owned submerged lands, any noticing requirements of s. 253.115 shall be met, in addition to those in s. 373.413.

(7) When a water management district acts pursuant to a delegation under s. 253.002, any person instituting an administrative or judicial proceeding regarding such action shall serve a copy of the petition or complaint on the board of trustees. The department or the Department of Legal Affairs, acting on behalf of the board of trustees, may intervene in any such proceeding.

History.—s. 501, ch. 94-356; s. 102, ch. 96-410.

373.4271 Conduct of challenge to consolidated environmental resource permit or associated variance or sovereign submerged lands authorization issued in connection with deepwater ports.—Notwithstanding s. 120.569, s. 120.57, or s. 373.427, or any other provision of law to the contrary, a challenge to a consolidated environmental resource permit or any associated variance or any sovereign submerged lands authorization proposed or issued by the Department of Environmental Protection in connection with the state's deepwater ports, as listed in s. 403.021(9), shall be conducted pursuant to the summary hearing provisions of s. 120.574; however, the summary proceeding shall be conducted within 30 days after a party files a motion for a summary hearing, regardless of whether the parties agree to the summary proceeding, and the administrative law judge's decision shall be in the form of a recommended order and does not constitute final agency action of the department. The Department of Environmental Protection shall issue the final order within 45 working days after receipt of the administrative law judge's recommended order. The summary hearing provisions of this section apply to pending administrative proceedings; however, s. 120.574(1)(b) and (d) and (2)(a)3. and 5. do not apply to pending administrative proceedings. This section shall take effect upon this act becoming a law.

History.—s. 42, ch. 2012-128; s. 80, ch. 2012-174.

373.4275 Review of consolidated orders.—

(1) Beginning on the effective date of the rules adopted under s. 373.427(1), review of any consolidated order rendered pursuant to s. 373.427(1) shall be governed by the provisions of s. 373.114(1). However, the term "party" shall mean any person who participated as a party in a proceeding under ss. 120.569 and 120.57 on the concurrently reviewed authorizations, permits, waivers, variances, or approvals, or any affected person who submitted to the department, water management district, or board of trustees oral or written testimony, sworn or unsworn, of a

substantive nature which stated with particularity objections to or support for the authorization, permit, waiver, variance, or approval, provided that such testimony was cognizable within the scope of this chapter or the applicable provisions of chapter 161, chapter 253, or chapter 258 when the consolidated notice of intent includes an authorization, permit, waiver, variance, or approval under those chapters. In such cases, the standard of review shall also ensure consistency with the applicable provisions and purposes of chapter 161, chapter 253, or chapter 258 when the consolidated order includes an authorization, permit, waiver, variance, or approval under those chapters. If the consolidated order subject to review includes approval or denial of proprietary authorization to use submerged lands on which the board of trustees has previously acted, as described in s. 373.427(2), the scope of review under this section shall not encompass such proprietary decision, but the standard of review shall also ensure consistency with the applicable provisions and purposes of chapter 161 when the consolidated order includes a permit, waiver, or approval under that chapter.

(a) The final order issued under this section shall contain separate findings of fact and conclusions of law, and a ruling that individually addresses each authorization, permit, waiver, variance, and approval that was the subject of the review.

(b) If a consolidated order includes proprietary authorization under chapter 253 or chapter 258 to use submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund for an activity for which the authority has been delegated to take final agency action without action of the board of trustees, the following additional provisions and exceptions to s. 373.114(1) apply:

1. The Governor and Cabinet shall sit concurrently as the Land and Water Adjudicatory Commission and the Board of Trustees of the Internal Improvement Trust Fund in exercising the exclusive authority to review the order;

2. The review may also be initiated by the Governor or any member of the Cabinet within 20 days after the rendering of the order in which case the other provisions of s. 373.114(1)(a) regarding acceptance of a request for review do not apply; and

3. If the Governor and Cabinet find that an authorization to use submerged lands is not consistent with chapter 253 or chapter 258, any authorization, permit, waiver, or approval authorized or granted by the consolidated order must be rescinded or modified or the proceeding must be remanded for further action consistent with the order issued under this section.

(2) Subject to the provisions of subsection (3), appellate review of that part of a consolidated order granting or denying authorization to use board of trustees-owned submerged lands on which the board of trustees has previously acted, as described in s. 373.427(2), shall be only pursuant to s. 120.68.

(3) As with an appeal under s. 373.114, the proper initiation of discretionary review under this section tolls the time for seeking judicial review under s. 120.68.

History.—s. 502, ch. 94-356; s. 103, ch. 96-410.

373.428 Federal consistency.— When an activity regulated under this part is subject to federal consistency review under s. 380.23, the final agency action on a permit application submitted under this part shall constitute the state's determination as to whether the activity is consistent with the federally approved Florida Coastal Management Program. Agencies with authority to review and comment on such activity pursuant to the Florida Coastal Management Program shall review such activity for consistency with only those statutes and rules incorporated into the Florida Coastal Management Program and implemented by that agency. An agency which submits a determination of inconsistency to the permitting agency shall be an indispensable party to any administrative or judicial proceeding in which such determination is an issue; shall be responsible for defending its determination in such proceedings; and shall be liable for any damages, costs, and attorneys' fees should any be awarded in an appropriate action as a consequence of such determination.

History.—s. 6, ch. 96-370.

373.429 Revocation and modification of permits.— The governing board or the department may revoke or modify a permit at any time if it determines that a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works has become a danger to the public health or safety or if its operation has become

inconsistent with the objectives of the district. The affected party may file a written petition for hearing no later than 14 days after notice of revocation or modification is served. If the executive director of the district or the division determines that the danger to the public is imminent, he or she may order a temporary suspension of the construction, alteration, or operation of the works until the hearing is concluded, or may take such action as authorized under s. 373.439.

History.—s. 9, part IV, ch. 72-299; s. 14, ch. 78-95; s. 19, ch. 89-279; s. 607, ch. 95-148.

373.430 Prohibitions, violation, penalty, intent.—

(1) It shall be a violation of this part, and it shall be prohibited for any person:

(a) To cause pollution, as defined in s. 403.031(7), except as otherwise provided in this part, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property.

(b) To fail to obtain any permit required by this part or by rule or regulation adopted pursuant thereto, or to violate or fail to comply with any rule, regulation, order, or permit adopted or issued by a water management district, the department, or local government pursuant to their lawful authority under this part.

(c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this part, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this part or by any permit, rule, regulation, or order issued under this part.

(2) A person who commits a violation specified in subsection (1) is liable for any damage caused and for civil penalties as provided in s. 373.129.

(3) A person who willfully commits a violation specified in paragraph (1)(a) commits a felony of the third degree, punishable as provided in ss. 775.082(3)(e) and 775.083(1)(g), by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) A person who commits a violation specified in paragraph (1)(a) or paragraph (1)(b) due to reckless indifference or gross careless disregard commits a misdemeanor of the second degree, punishable as provided in ss. 775.082(4)(b) and 775.083(1)(g), by a fine of not more than $10,000 or 60 days in jail, or by both, for each offense.

(5) A person who willfully commits a violation specified in paragraph (1)(b) or who commits a violation specified in paragraph (1)(c) commits a misdemeanor of the first degree, punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of not more than $10,000 or by 6 months in jail, or by both, for each offense.

(6) It is the intent of the Legislature that the civil penalties imposed by the court be of such amount as to ensure immediate and continued compliance with this section.

(7) All moneys recovered under the provisions of this section shall be allocated to the use of the water management district, the department, or the local government, whichever undertook and maintained the enforcement action. All monetary penalties and damages recovered by the department or the state under the provisions of this section shall be deposited into the Water Quality Assurance Trust Fund. All monetary penalties and damages recovered pursuant to this section by a water management district shall be retained and used exclusively within the territory of the water management district which collected the money. All monetary penalties and damages recovered pursuant to this subsection by a local government to which authority has been delegated pursuant to s. 373.103(8) shall be used to enhance surface water improvement or pollution control activities.

History.—s. 33, ch. 93-213; s. 40, ch. 96-321; s. 5, ch. 2014-220; s. 39, ch. 2015-229; s. 9, ch. 2020-158.

373.433 Abatement.— Any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works which violates the laws of this state or which violates the standards of the governing board or the department shall be declared a public nuisance. The operation of such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be enjoined by suit by the state or any of its agencies or by a private citizen. The governing board or the department shall be a necessary party to any such suit. Nothing herein shall be construed to conflict with the provisions of s. 373.429.

History.—s. 10, part IV, ch. 72-299; s. 20, ch. 89-279.

373.436 Remedial measures.—

(1) Upon completion of any inspection provided for by s. 373.423(3), the executive director or the department shall determine what alterations or repairs are necessary and order that such alterations and repairs shall be made within a time certain, which shall be a reasonable time. The owner of such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may file a written petition for hearing before the governing board or the department no later than 14 days after such order is served. If, after such order becomes final, the owner shall fail to make the specified alterations or repairs, the governing board or the department may, in its discretion, cause such alterations or repairs to be made.

(2) Any cost to the district or the department of alterations or repairs made by it under the provisions of subsection (1) shall be a lien against the property of the landowner on whose lands the alterations or repairs are made until the governing board or department is reimbursed, with reasonable interest and attorney's fees, for its costs.

History.—s. 11, part IV, ch. 72-299; s. 14, ch. 78-95; s. 21, ch. 89-279.

373.439 Emergency measures.—

(1) The executive director, with the concurrence of the governing board, or the department shall immediately employ any remedial means to protect life and property if either:

(a) The condition of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation.

(b) Passing or imminent floods threaten the safety of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works.

(2) In applying the emergency measures provided for in this section, the executive director or the Department of Environmental Protection may in an emergency do any of the following:

(a) Lower the water level by releasing water from any impoundment or reservoir.

(b) Completely empty the impoundment or reservoir.

(c) Take such other steps as may be essential to safeguard life and property.

(3) The executive director or the Department of Environmental Protection shall continue in full charge and control of such stormwater management system, dam, impoundment, reservoir, and its appurtenant works until they are rendered safe or the emergency occasioning the action has ceased.

History.—s. 12, part IV, ch. 72-299; s. 49, ch. 79-65; s. 22, ch. 89-279; s. 270, ch. 94-356.

373.441 Role of counties, municipalities, and local pollution control programs in permit processing; delegation.—

(1) The department shall, by December 1, 1994, adopt rules to guide the participation of counties, municipalities, and local pollution control programs in an efficient, streamlined permitting system. Such rules must seek to increase governmental efficiency, maintain environmental standards, and include consideration of:

(a) Provisions under which the environmental resource permit program is delegated, upon approval of the department, only to a county, municipality, or local pollution control program that has the financial, technical, and administrative capabilities and desire to implement and enforce the program;

(b) Provisions under which a locally delegated permit program may have stricter environmental standards than state standards;

(c) Provisions for identifying and reconciling any duplicative permitting by January 1, 1995;

(d) Provisions for timely and cost-efficient notification by the reviewing agency of permit applications, and permit requirements, to counties, municipalities, local pollution control programs, the department, or water management districts, as appropriate;

(e) Provisions for ensuring the consistency of permit applications with local comprehensive plans;

(f) Provisions for the partial delegation of the environmental resource permit program to counties, municipalities, or local pollution control programs, and standards and criteria to be employed in the implementation of such delegation by counties, municipalities, and local pollution control programs;

(g) Special provisions under which the environmental resource permit program may be delegated to counties having populations of 75,000 or fewer, or municipalities with, or local pollution control programs serving, populations of 50,000 or fewer;

(h) Provisions for the applicability of chapter 120 to local government programs when the environmental resource permit program is delegated to counties, municipalities, or local pollution control programs; and

(i) Provisions for a local government to petition the Governor and Cabinet for review of a request for a delegation of authority that is not approved or denied within 1 year after being initiated.

(2) Any denial by the department of a local government's request for a delegation of authority must provide specific detail of those statutory or rule provisions that were not satisfied. Such detail shall also include specific actions that can be taken in order to allow for the delegation of authority. A local government, upon being denied a request for a delegation of authority, may petition the Governor and Cabinet for a review of the request. The Governor and Cabinet may reverse the decision of the department and may provide any necessary conditions to allow the delegation of authority to occur.

(3) Delegation of authority shall be approved if the local government meets the requirements set forth in rule 62-344, Florida Administrative Code. This section does not require a local government to seek delegation of the environmental resource permit program.

(4) This section does not affect or modify land development regulations adopted by a local government to implement its comprehensive plan pursuant to chapter 163.

(5) The department shall review environmental resource permit applications for electrical distribution and transmission lines and other facilities related to the production, transmission, and distribution of electricity which are not certified under ss. 403.52-403.5365, the Florida Electric Transmission Line Siting Act, regulated under this part.

History.—s. 34, ch. 93-213; s. 17, ch. 94-122; s. 33, ch. 95-146; s. 13, ch. 98-258; s. 67, ch. 2006-230; s. 41, ch. 2010-147.

373.4415 Role of Miami-Dade County in processing permits for limerock mining in Miami-Dade County Lake Belt.—The department and Miami-Dade County shall cooperate to establish and fulfill reasonable requirements for the departmental delegation to the Miami-Dade County Department of Environmental Resource Management of authority to implement the permitting program under ss. 373.403-373.439 for limerock mining activities within the geographic area of the Miami-Dade County Lake Belt which was recommended for mining in the report submitted to the Legislature in February 1997 under s. 373.4149. The delegation of authority must be consistent with s. 373.441 and chapter 62-344, Florida Administrative Code. To further streamline permitting within the Miami-Dade County Lake Belt, the department and Miami-Dade County are encouraged to work with the United States Army Corps of Engineers to establish a general permit under s. 404 of the Clean Water Act for limerock mining activities within the geographic area of the Miami-Dade County Lake Belt consistent with the report submitted in February 1997. Miami-Dade County is further encouraged to seek delegation from the United States Army Corps of Engineers for the implementation of any such general permit. This section does not limit the authority of the department to delegate other responsibilities to Miami-Dade County under this part.

History.—s. 3, ch. 97-222; s. 3, ch. 99-298; s. 4, ch. 2001-172.

373.443 Immunity from liability.—No action shall be brought against the state or district, or any agents or employees of the state or district, for the recovery of damages caused by the partial or total failure of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works upon the ground that the state or district is liable by virtue of any of the following:

(1) Approval of the permit for construction or alteration.

(2) The issuance or enforcement of any order relative to maintenance or operation.

(3) Control or regulation of stormwater management systems, dams, impoundments, reservoirs, appurtenant work, or works regulated under this chapter.

(4) Measures taken to protect against failure during emergency.

History.—s. 13, part IV, ch. 72-299; s. 23, ch. 89-279.

373.451 Short title; legislative findings and intent.—

(1) Sections 373.451-373.4595 may be cited as the "Surface Water Improvement and Management Act."

(2) Legislative intent.—The Legislature finds that the water quality of many of the surface waters of the state has been degraded, or is in danger of becoming degraded, and that the natural systems associated with many surface waters have been altered so that these surface waters no longer perform the important functions that they once performed. These functions include:

(a) Providing aesthetic and recreational pleasure for the people of the state;

(b) Providing habitat for native plants, fish, and wildlife, including endangered and threatened species;

(c) Providing safe drinking water to the growing population of the state; and

(d) Attracting visitors and accruing other economic benefits.

(3) The Legislature finds that the declining quality of the state's surface waters has been detrimental to the public's right to enjoy these surface waters and that it is the duty of the state, through the state's agencies and subdivisions, to enhance the environmental and scenic value of surface waters.

(4) The Legislature finds that factors contributing to the decline in the ecological, aesthetic, recreational, and economic value of the state's surface waters include:

(a) Point and nonpoint source pollution; and

(b) Destruction of the natural systems which purify surface waters and provide habitats.

(5) The Legislature finds that many surface water problems can be and have been corrected and prevented through plans and programs for surface water improvement and management that are developed and implemented by the water management districts, the department, and local governments.

(6) It is therefore the intent of the Legislature that each water management district develop plans and programs for the improvement and management of surface waters within its boundaries.

(7) It is also the intent of the Legislature that the department, the water management districts, and others conduct research to provide a better scientific understanding of the causes and effects of surface water pollution and of the destruction of natural systems in order to improve and manage surface waters and associated natural systems.

History.—s. 1, ch. 87-97; s. 24, ch. 89-279; s. 41, ch. 96-321; s. 4, ch. 2003-265.

373.453 Surface water improvement and management plans and programs.—

(1)(a) Each water management district, in cooperation with the department, the Department of Agriculture and Consumer Services, the Department of Economic Opportunity, the Fish and Wildlife Conservation Commission, local governments, and others, shall maintain a list that prioritizes water bodies of regional or statewide significance within the water management district. The list shall be reviewed and updated every 5 years.

(b) Criteria to be used in developing the lists shall include, but not be limited to, consideration of violations of water quality standards occurring in the water body, the amounts of nutrients entering the water body and the water body's trophic state, water bodies on the department's list of impaired waters, water bodies with established total maximum daily loads, the existence of or need for a continuous aquatic weed control program in the water body, the biological condition of the water body, reduced fish and wildlife values, threats to agricultural and urban water supplies, threats to public recreational opportunities, the management of the water body through federal, state, or local water quality programs or plans, and public input.

(c) In maintaining their respective priority water body lists, water management districts shall give consideration to the following priority areas:

1. The South Florida Water Management District shall give priority to the restoration needs of Lake Okeechobee, Biscayne Bay, the Lake Worth Lagoon, and the Indian River Lagoon system and their tributaries.

2. The Southwest Florida Water Management District shall give priority to the restoration needs of Tampa Bay and its tributaries.

3. The St. Johns River Water Management District shall give priority to the restoration needs of Lake Apopka, the Lower St. Johns River, and the Indian River Lagoon system and their tributaries.

(2) Unless otherwise provided by law, the water management districts, in cooperation with state agencies, local governments, and others, may develop surface water improvement and management plans and programs for the

water bodies identified on the priority lists. Plans developed pursuant to this subsection shall include, but not be limited to:

(a) A description of the water body system, its historical and current uses, its hydrology, and the conditions that have led to the need for restoration or protection;

(b) An identification of all governmental units that have jurisdiction over the water body and its drainage basin within the approved surface water improvement and management plan area, including local, regional, state, and federal units;

(c) A description of land uses within the drainage basin of the priority water body and those of important tributaries;

(d) Identification of point and nonpoint sources of water pollution that are discharged into the water body and its important tributaries;

(e) A description of strategies and a schedule for related management actions for restoring or protecting the water body to Class III or better, including those needed to help achieve state-adopted total maximum daily loads for the water body;

(f) A description of the management actions needed to maintain the water body once it has been restored and to prevent future degradation; and

(g) An estimate of the funding needed to carry out the restoration or protection strategies and a listing of available and potential funding sources and amounts.

(3) The governing board of the appropriate water management district shall hold at least one public hearing and public workshop in the vicinity of a priority water body for which a plan is being developed to obtain public input prior to finalizing the surface water improvement and management plan for the water body. The water management district shall then forward a copy of the plan to the department, the Fish and Wildlife Conservation Commission, the Department of Agriculture and Consumer Services, and appropriate local governmental units for their review and comment within 45 calendar days after the date the plan is forwarded to them. The department shall specifically comment on the likelihood that implementing the plan will significantly improve or protect water quality and associated natural systems. At the end of the 45-day review period, the water management district may proceed to approve the plan, whether or not comments have been submitted.

(4) Plans shall be updated as necessary to ensure that they effectively address the restoration and protection needs of the priority water bodies and that they reflect current scientific understandings and budgetary adjustments. If a district determines that modifications of or additions to a plan are necessary, such modifications or additions shall be subject to the review process established in this section.

(5) The governing board of each water management district is encouraged to appoint advisory committees as necessary to assist in formulating and evaluating strategies for water body protection and restoration activities and to increase public awareness and intergovernmental cooperation. Such committees should include representatives of appropriate local governments, state and federal agencies, existing advisory councils for the priority water body, and representatives of the public who use the water body.

(6) The water management districts may contract with appropriate state, local, and regional agencies and others to perform various tasks associated with the development and implementation of surface water improvement and management plans and programs.

History.—s. 2, ch. 87-97; s. 25, ch. 89-279; s. 271, ch. 94-356; s. 187, ch. 99-245; s. 5, ch. 2003-265; s. 250, ch. 2011-142.

373.459 Funds for surface water improvement and management.—

(1) Legislative appropriations provided to the water management districts for surface water improvement and management activities shall be available for detailed planning and plan and program implementation.

(2) An entity that receives state funding for the implementation of programs specified in ss. 373.451-373.459, including a water management district, federal, local, or regional agency, university, or nonprofit or private organization, shall provide a 50-percent match of cash or in-kind services towards the implementation of the specific project for which it is contracting.

(3) The department shall administer all funds appropriated to or received for surface water improvement and management activities. Expenditure of the moneys shall be limited to the costs of detailed planning and plan and program implementation for priority surface water bodies. Moneys may not be expended for planning for, or construction or expansion of, treatment facilities for domestic or industrial waste disposal.

(4) The department shall authorize the release of money in accordance with s. 373.501(2).

(5) The match requirement of subsection (2) does not apply to the Suwannee River Water Management District, the Northwest Florida Water Management District, or a financially disadvantaged small local government as defined in former s. 403.885(3).

History.—s. 5, ch. 87-97; s. 29, ch. 89-279; s. 9, ch. 91-79; s. 11, ch. 91-305; s. 11, ch. 94-115; s. 504, ch. 94-356; s. 44, ch. 96-321; s. 6, ch. 2003-265; s. 8, ch. 2005-291; s. 33, ch. 2006-26; ss. 39, 54, ch. 2007-73; s. 3, ch. 2007-191; s. 17, ch. 2008-5; s. 40, ch. 2015-229.

373.4591 Improvements on private agricultural lands.—

(1) The Legislature encourages public-private partnerships to accomplish water storage, groundwater recharge, and water quality improvements on private agricultural lands. Priority consideration shall be given to public-private partnerships that:

(a) Store or treat water on private lands for purposes of enhancing hydrologic improvement, improving water quality, or assisting in water supply;

(b) Provide critical groundwater recharge; or

(c) Provide for changes in land use to activities that minimize nutrient loads and maximize water conservation.

(2)(a) When an agreement is entered into between the department, a water management district, or the Department of Agriculture and Consumer Services and a private landowner to establish a public-private partnership that may create or impact wetlands or other surface waters, a baseline condition determining the extent of wetlands and other surface waters on the property shall be established and documented in the agreement before improvements are constructed.

(b) When an agreement is entered into between the Department of Agriculture and Consumer Services and a private landowner to implement best management practices pursuant to s. 403.067(7)(c), a baseline condition determining the extent of wetlands and other surface water on the property may be established at the option and expense of the private landowner and documented in the agreement before improvements are constructed. The Department of Agriculture and Consumer Services shall submit the landowner's proposed baseline condition documentation to the lead agency for review and approval, and the agency shall use its best efforts to complete the review within 45 days.

(3) The Department of Agriculture and Consumer Services, the department, and the water management districts shall provide a process for reviewing these requests in the timeframe specified. The determination of a baseline condition shall be conducted using the methods set forth in the rules adopted pursuant to s. 373.421. The baseline condition documented in an agreement shall be considered the extent of wetlands and other surface waters on the property for the purpose of regulation under this chapter for the duration of the agreement and after its expiration.

History.—s. 1, ch. 2012-187; s. 7, ch. 2014-150; s. 14, ch. 2016-1.

373.4592 Everglades improvement and management.—

(1) FINDINGS AND INTENT.—

(a) The Legislature finds that the Everglades ecological system not only contributes to South Florida's water supply, flood control, and recreation, but serves as the habitat for diverse species of wildlife and plant life. The system is unique in the world and one of Florida's great treasures. The Everglades ecological system is endangered as a result of adverse changes in water quality, and in the quantity, distribution, and timing of flows, and, therefore, must be restored and protected.

(b) The Legislature finds that, although the district and the department have developed plans and programs for the improvement and management of the surface waters tributary to the Everglades Protection Area, implementation of those plans and programs has not been as timely as is necessary to restore and protect unique flora and fauna of the Everglades, including the Everglades National Park and the Arthur R. Marshall Loxahatchee National Wildlife Refuge.

Therefore, the Legislature determines that an appropriate method to proceed with Everglades restoration and protection is to authorize the district to proceed expeditiously with implementation of the Everglades Program.

(c) The Legislature finds that, in the last decade, people have come to realize the tremendous cost the alteration of natural systems has exacted on the region. The Statement of Principles of July 1993 among the Federal Government, the South Florida Water Management District, the Department of Environmental Protection, and certain agricultural industry representatives formed a basis to bring to a close 5 years of costly litigation. That agreement should be used to begin the cleanup and renewal of the Everglades ecosystem.

(d) It is the intent of the Legislature to promote Everglades restoration and protection through certain legislative findings and determinations. The Legislature finds that waters flowing into the Everglades Protection Area contain excessive levels of phosphorus. A reduction in levels of phosphorus will benefit the ecology of the Everglades Protection Area.

(e) It is the intent of the Legislature to pursue comprehensive and innovative solutions to issues of water quality, water quantity, hydroperiod, and invasion of exotic species which face the Everglades ecosystem. The Legislature recognizes that the Everglades ecosystem must be restored both in terms of water quality and water quantity and must be preserved and protected in a manner that is long term and comprehensive. The Legislature further recognizes that the EAA and adjacent areas provide a base for an agricultural industry, which in turn provides important products, jobs, and income regionally and nationally. It is the intent of the Legislature to preserve natural values in the Everglades while also maintaining the quality of life for all residents of South Florida, including those in agriculture, and to minimize the impact on South Florida jobs, including agricultural, tourism, and natural resource-related jobs, all of which contribute to a robust regional economy.

(f) The Legislature finds that improved water supply and hydroperiod management are crucial elements to overall revitalization of the Everglades ecosystem, including Florida Bay. It is the intent of the Legislature to expedite plans and programs for improving water quantity reaching the Everglades, correcting long-standing hydroperiod problems, increasing the total quantity of water flowing through the system, providing water supply for the Everglades National Park, urban and agricultural areas, and Florida Bay, and replacing water previously available from the coastal ridge in areas of southern Miami-Dade County. Whenever possible, wasteful discharges of fresh water to tide shall be reduced, and the water shall be stored for delivery at more optimum times. Additionally, reuse and conservation measures shall be implemented consistent with law. The Legislature further recognizes that additional water storage may be an appropriate use of Lake Okeechobee.

(g) The Legislature finds that the Statement of Principles of July 1993, the Everglades Construction Project, and the regulatory requirements of this section provide a sound basis for the state's long-term cleanup and restoration objectives for the Everglades. It is the intent of the Legislature to provide a sufficient period of time for construction, testing, and research, so that the benefits of the Long-Term Plan will be determined and maximized prior to requiring additional measures. The Legislature finds that STAs and BMPs are currently the best available technology for achieving the water quality goals of the Everglades Program and that implementation of BMPs, funded by the owners and users of land in the EAA, effectively reduces nutrients in waters flowing into the Everglades Protection Area. A combined program of agricultural BMPs, STAs, and requirements of this section is a reasonable method of achieving total phosphorus discharge reductions. The Everglades Program is an appropriate foundation on which to build a long-term program to ultimately achieve restoration and protection of the Everglades Protection Area.

(h) The Everglades Construction Project represents by far the largest environmental cleanup and restoration program of this type ever undertaken, and the returns from substantial public and private investment must be maximized so that available resources are managed responsibly. To that end, the Legislature directs that the Everglades Construction Project and regulatory requirements associated with the Statement of Principles of July 1993 be pursued expeditiously, but with flexibility, so that superior technology may be utilized when available. Consistent with the implementation of the Everglades Construction Project, landowners shall be provided the maximum opportunity to provide treatment on their land.

(2) DEFINITIONS.—As used in this section:

(a) "Best available phosphorus reduction technology" or "BAPRT" means a combination of BMPs and STAs which includes a continuing research and monitoring program to reduce outflow concentrations of phosphorus so as to

achieve the phosphorus criterion in the Everglades Protection Area.

(b) "Best management practice" or "BMP" means a practice or combination of practices determined by the district, in cooperation with the department, based on research, field-testing, and expert review, to be the most effective and practicable, including economic and technological considerations, on-farm means of improving water quality in agricultural discharges to a level that balances water quality improvements and agricultural productivity.

(c) "C-139 Basin" or "Basin" means those lands described in subsection (16).

(d) "Department" means the Florida Department of Environmental Protection.

(e) "District" means the South Florida Water Management District.

(f) "Everglades Agricultural Area" or "EAA" means the Everglades Agricultural Area, which are those lands described in subsection (15).

(g) "Everglades Construction Project" means the project described in the February 15, 1994, conceptual design document together with construction and operation schedules on file with the South Florida Water Management District, except as modified by this section and further described in the Long-Term Plan.

(h) "Everglades Program" means the program of projects, regulations, and research provided by this section, including the Everglades Construction Project.

(i) "Everglades Protection Area" means Water Conservation Areas 1, 2A, 2B, 3A, and 3B, the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and the Everglades National Park.

(j) "Long-Term Plan" or "Plan" means the district's "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report" dated March 2003, as subsequently modified in accordance with paragraph (3)(b), and the district's "Restoration Strategies Regional Water Quality Plan" dated April 27, 2012, as may be subsequently modified pursuant to paragraph (3)(b).

(k) "Master permit" means a single permit issued to a legally responsible entity defined by rule, authorizing the construction, alteration, maintenance, or operation of multiple stormwater management systems that may be owned or operated by different persons and which provides an opportunity to achieve collective compliance with applicable department and district rules and the provisions of this section.

(l) "Optimization" shall mean maximizing the potential treatment effectiveness of the STAs through measures such as additional compartmentalization, improved flow control, vegetation management, or operation refinements, in combination with improvements where practicable in urban and agricultural BMPs, and includes integration with congressionally authorized components of the Comprehensive Everglades Restoration Plan or "CERP".

(m) "Phosphorus criterion" means a numeric interpretation for phosphorus of the Class III narrative nutrient criterion.

(n) "Stormwater management program" shall have the meaning set forth in s. 403.031(15).

(o) "Stormwater treatment areas" or "STAs" means those treatment areas described and depicted in the district's conceptual design document of February 15, 1994, and any modifications as provided in this section.

(p) "Technology-based effluent limitation" or "TBEL" means the technology-based treatment requirements as defined in rule 62-650.200, Florida Administrative Code.

(3) EVERGLADES LONG-TERM PLAN.—

(a) The Legislature finds that the Everglades Program required by this section establishes more extensive and comprehensive requirements for surface water improvement and management within the Everglades than the SWIM plan requirements provided in ss. 373.451 and 373.453. In order to avoid duplicative requirements, and in order to conserve the resources available to the district, the SWIM plan requirements of those sections shall not apply to the Everglades Protection Area and the EAA during the term of the Everglades Program, and the district will neither propose, nor take final agency action on, any Everglades SWIM plan for those areas until the Everglades Program is fully implemented. Funds identified under former s. 259.101(3)(b), Florida Statutes 2014, may be used for acquisition of lands necessary to implement the Everglades Construction Project, to the extent these funds are identified in the Statement of Principles of July 1993. The district's actions in implementing the Everglades Construction Project relating to the responsibilities of the EAA and C-139 Basin for funding and water quality compliance in the EAA and the Everglades Protection Area shall be governed by this section. Other strategies or activities in the March 1992 Everglades SWIM plan may be implemented if otherwise authorized by law.

(b) The Legislature finds that the most reliable means of optimizing the performance of STAs and achieving reasonable further progress in reducing phosphorus entering the Everglades Protection Area is to utilize a long-term planning process. The Legislature finds that the Long-Term Plan provides the best available phosphorus reduction technology based upon a combination of the BMPs and STAs described in the Plan provided that the Plan shall seek to achieve the phosphorus criterion in the Everglades Protection Area. The pre-2006 projects identified in the Long-Term Plan shall be implemented by the district without delay, and revised with the planning goal and objective of achieving the phosphorus criterion to be adopted pursuant to subparagraph (4)(e)2. in the Everglades Protection Area, and not based on any planning goal or objective in the Plan that is inconsistent with this section. Revisions to the Long-Term Plan shall be incorporated through an adaptive management approach including a process development and engineering component to identify and implement incremental optimization measures for further phosphorus reductions. Revisions to the Long-Term Plan shall be approved by the department. In addition, the department may propose changes to the Long-Term Plan as science and environmental conditions warrant.

(c) It is the intent of the Legislature that implementation of the Long-Term Plan shall be integrated and consistent with the implementation of the projects and activities in the congressionally authorized components of the CERP so that unnecessary and duplicative costs will be avoided. Nothing in this section shall modify any existing cost share or responsibility provided for projects listed in s. 528 of the Water Resources Development Act of 1996 (110 Stat. 3769) or provided for projects listed in s. 601 of the Water Resources Development Act of 2000 (114 Stat. 2572). The Legislature does not intend for the provisions of this section to diminish commitments made by the State of Florida to restore and maintain water quality in the Everglades Protection Area, including the federal lands in the settlement agreement referenced in paragraph (4)(e).

(d) The Long-Term Plan shall be implemented and shall achieve water quality standards relating to the phosphorus criterion in the Everglades Protection Area as determined by a network of monitoring stations established for this purpose. Not later than December 31, 2008, and each 5 years thereafter, the department shall review and approve incremental phosphorus reduction measures.

(4) EVERGLADES PROGRAM.—

(a) *Everglades Construction Project.*—The district shall implement the Everglades Construction Project. By the time of completion of the project, the state, district, or other governmental authority shall purchase the inholdings in the Rotenberger tract and such other lands necessary to achieve a 2:1 mitigation ratio for the use of Brown's Farm and other similar lands, including those needed for the STA 1 Inflow and Distribution Works. The inclusion of public lands as part of the project is for the purpose of treating waters not coming from the EAA for hydroperiod restoration. It is the intent of the Legislature that the district aggressively pursue the implementation of the Everglades Construction Project in accordance with the schedule in this subsection. The Legislature recognizes that adherence to the schedule is dependent upon factors beyond the control of the district, including the timely receipt of funds from all contributors. The district shall take all reasonable measures to complete timely performance of the schedule in this section in order to finish the Everglades Construction Project. The district shall not delay implementation of the project beyond the time delay caused by those circumstances and conditions that prevent timely performance. The district shall not levy ad valorem taxes in excess of 0.1 mill within the Okeechobee Basin for the purposes of the design, construction, and acquisition of the Everglades Construction Project. The ad valorem tax proceeds not exceeding 0.1 mill levied within the Okeechobee Basin for such purposes shall also be used for design, construction, and implementation of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in the Long-Term Plan, and including the enhancements and operation and maintenance of the Everglades Construction Project and shall be the sole direct district contribution from district ad valorem taxes appropriated or expended for the design, construction, and acquisition of the Everglades Construction Project unless the Legislature by specific amendment to this section increases the 0.1 mill ad valorem tax contribution, increases the agricultural privilege taxes, or otherwise reallocates the relative contribution by ad valorem taxpayers and taxpayers paying the agricultural privilege taxes toward the funding of the design, construction, and acquisition of the Everglades Construction Project. Notwithstanding the provisions of s. 200.069 to the contrary, any millage levied under the 0.1 mill limitation in this paragraph shall be included as a separate entry on the Notice of Proposed Property Taxes pursuant to s. 200.069. Once the STAs are completed, the district shall allow these areas to be used by the public for recreational purposes in the

manner set forth in s. 373.1391(1), considering the suitability of these lands for such uses. These lands shall be made available for recreational use unless the district governing board can demonstrate that such uses are incompatible with the restoration goals of the Everglades Construction Project or the water quality and hydrological purposes of the STAs or would otherwise adversely impact the implementation of the project. The district shall give preferential consideration to the hiring of agricultural workers displaced as a result of the Everglades Construction Project, consistent with their qualifications and abilities, for the construction and operation of these STAs. The following milestones apply to the completion of the Everglades Construction Project as depicted in the February 15, 1994, conceptual design document:

1. The district must complete the final design of the STA 1 East and West and pursue STA 1 East project components as part of a cost-shared program with the Federal Government. The district must be the local sponsor of the federal project that will include STA 1 East, and STA 1 West if so authorized by federal law;

2. Construction of STA 1 East is to be completed under the direction of the United States Army Corps of Engineers in conjunction with the currently authorized C-51 flood control project;

3. The district must complete construction of STA 1 West and STA 1 Inflow and Distribution Works under the direction of the United States Army Corps of Engineers, if the direction is authorized under federal law, in conjunction with the currently authorized C-51 flood control project;

4. The district must complete construction of STA 3/4 by October 1, 2003; however, the district may modify this schedule to incorporate and accelerate enhancements to STA 3/4 as directed in the Long-Term Plan;

5. The district must complete construction of STA 6;

6. The district must, by December 31, 2006, complete construction of enhancements to the Everglades Construction Project recommended in the Long-Term Plan and initiate other pre-2006 strategies in the plan; and

7. East Beach Water Control District, South Shore Drainage District, South Florida Conservancy District, East Shore Water Control District, and the lessee of agricultural lease number 3420 shall complete any system modifications described in the Everglades Construction Project to the extent that funds are available from the Everglades Fund. These entities shall divert the discharges described within the Everglades Construction Project within 60 days of completion of construction of the appropriate STA. Such required modifications shall be deemed to be a part of each district's plan of reclamation pursuant to chapter 298.

(b) *Everglades water supply and hydroperiod improvement and restoration.*—

1. A comprehensive program to revitalize the Everglades shall include programs and projects to improve the water quantity reaching the Everglades Protection Area at optimum times and improve hydroperiod deficiencies in the Everglades ecosystem. To the greatest extent possible, wasteful discharges of fresh water to tide shall be reduced, and water conservation practices and reuse measures shall be implemented by water users, consistent with law. Water supply management must include improvement of water quantity reaching the Everglades, correction of long-standing hydroperiod problems, and an increase in the total quantity of water flowing through the system. Water supply management must provide water supply for the Everglades National Park, the urban and agricultural areas, and the Florida Bay and must replace water previously available from the coastal ridge areas of southern Miami-Dade County. The Everglades Construction Project redirects some water currently lost to tide. It is an important first step in completing hydroperiod improvement.

2. The district shall operate the Everglades Construction Project as specified in the February 15, 1994, conceptual design document, to provide additional inflows to the Everglades Protection Area. The increased flow from the project shall be directed to the Everglades Protection Area as needed to achieve an average annual increase of 28 percent compared to the baseline years of 1979 to 1988. Consistent with the design of the Everglades Construction Project and without demonstratively reducing water quality benefits, the regulatory releases will be timed and distributed to the Everglades Protection Area to maximize environmental benefits.

3. The district shall operate the Everglades Construction Project in accordance with the February 15, 1994, conceptual design document to maximize the water quantity benefits and improve the hydroperiod of the Everglades Protection Area. All reductions of flow to the Everglades Protection Area from BMP implementation will be replaced. The district shall develop a model to be used for quantifying the amount of water to be replaced. The timing and

distribution of this replaced water will be directed to the Everglades Protection Area to maximize the natural balance of the Everglades Protection Area.

4. The Legislature recognizes the complexity of the Everglades watershed, as well as legal mandates under Florida and federal law. As local sponsor of the Central and Southern Florida Flood Control Project, the district must coordinate its water supply and hydroperiod programs with the Federal Government. Federal planning, research, operating guidelines, and restrictions for the Central and Southern Florida Flood Control Project now under review by federal agencies will provide important components of the district's Everglades Program. The department and district shall use their best efforts to seek the amendment of the authorized purposes of the project to include water quality protection, hydroperiod restoration, and environmental enhancement as authorized purposes of the Central and Southern Florida Flood Control Project, in addition to the existing purposes of water supply, flood protection, and allied purposes. Further, the department and the district shall use their best efforts to request that the Federal Government include in the evaluation of the regulation schedule for Lake Okeechobee a review of the regulatory releases, so as to facilitate releases of water into the Everglades Protection Area which further improve hydroperiod restoration.

5. The district, through cooperation with the federal and state agencies, shall develop other programs and methods to increase the water flow and improve the hydroperiod of the Everglades Protection Area.

6. Nothing in this section is intended to provide an allocation or reservation of water or to modify the provisions of part II. All decisions regarding allocations and reservations of water shall be governed by applicable law.

7. The district shall proceed to expeditiously implement the minimum flows and levels for the Everglades Protection Area as required by s. 373.042 and shall expeditiously complete the Lower East Coast Water Supply Plan.

(c) *STA 3/4 modification.*—The Everglades Program will contribute to the restoration of the Rotenberger and Holey Land tracts. The Everglades Construction Project provides a first step toward restoration by improving hydroperiod with treated water for the Rotenberger tract and by providing a source of treated water for the Holey Land. It is further the intent of the Legislature that the easternmost tract of the Holey Land, known as the "Toe of the Boot," be removed from STA 3/4 under the circumstances set forth in this paragraph. The district shall proceed to modify the Everglades Construction Project, provided that the redesign achieves at least as many environmental and hydrological benefits as are included in the original design, including treatment of waters from sources other than the EAA, and does not delay construction of STA 3/4. The district is authorized to use eminent domain to acquire alternative lands, only if such lands are located within 1 mile of the northern border of STA 3/4.

(d) *Everglades research and monitoring program.*—

1. The department and the district shall review and evaluate available water quality data for the Everglades Protection Area and tributary waters and identify any additional information necessary to adequately describe water quality in the Everglades Protection Area and tributary waters. The department and the district shall also initiate a research and monitoring program to generate such additional information identified and to evaluate the effectiveness of the BMPs and STAs, as they are implemented, in improving water quality and maintaining designated and existing beneficial uses of the Everglades Protection Area and tributary waters. As part of the program, the district shall monitor all discharges into the Everglades Protection Area for purposes of determining compliance with state water quality standards.

2. The research and monitoring program shall evaluate the ecological and hydrological needs of the Everglades Protection Area, including the minimum flows and levels. Consistent with such needs, the program shall also evaluate water quality standards for the Everglades Protection Area and for the canals of the EAA, so that these canals can be classified in the manner set forth in paragraph (e) and protected as an integral part of the water management system which includes the STAs of the Everglades Construction Project and allows landowners in the EAA to achieve applicable water quality standards compliance by BMPs and STA treatment to the extent this treatment is available and effective.

3. The research and monitoring program shall include research seeking to optimize the design and operation of the STAs, including research to reduce outflow concentrations, and to identify other treatment and management methods and regulatory programs that are superior to STAs in achieving the intent and purposes of this section.

4. The research and monitoring program shall be conducted to allow the department to propose a phosphorus criterion in the Everglades Protection Area, and to evaluate existing state water quality standards applicable to the Everglades Protection Area and existing state water quality standards and classifications applicable to the EAA canals. In developing the phosphorus criterion, the department shall also consider the minimum flows and levels for the Everglades Protection Area and the district's water supply plans for the Lower East Coast.

5. Beginning March 1, 2006, as part of the consolidated annual report required by s. 373.036(7), the district and the department shall annually issue a peer-reviewed report regarding the research and monitoring program that summarizes all data and findings. The report shall identify water quality parameters, in addition to phosphorus, which exceed state water quality standards or are causing or contributing to adverse impacts in the Everglades Protection Area.

6. The district shall continue research seeking to optimize the design and operation of STAs and to identify other treatment and management methods that are superior to STAs in achieving optimum water quality and water quantity for the benefit of the Everglades. The district shall optimize the design and operation of the STAs described in the Everglades Construction Project prior to expanding their size. Additional methods to achieve compliance with water quality standards shall not be limited to more intensive management of the STAs.

(e) *Evaluation of water quality standards.—*

1. The department and the district shall employ all means practicable to complete by December 31, 1998, any additional research necessary to:

a. Numerically interpret for phosphorus the Class III narrative nutrient criterion necessary to meet water quality standards in the Everglades Protection Area; and

b. Evaluate existing water quality standards applicable to the Everglades Protection Area and EAA canals.

2. In no case shall such phosphorus criterion allow waters in the Everglades Protection Area to be altered so as to cause an imbalance in the natural populations of aquatic flora or fauna. The phosphorus criterion shall be 10 parts per billion (ppb) in the Everglades Protection Area in the event the department does not adopt by rule such criterion by December 31, 2003. However, in the event the department fails to adopt a phosphorus criterion on or before December 31, 2002, any person whose substantial interests would be affected by the rulemaking shall have the right, on or before February 28, 2003, to petition for a writ of mandamus to compel the department to adopt by rule such criterion. Venue for the mandamus action must be Leon County. The court may stay implementation of the 10 parts per billion (ppb) criterion during the pendency of the mandamus proceeding upon a demonstration by the petitioner of irreparable harm in the absence of such relief. The department's phosphorus criterion, whenever adopted, shall supersede the 10 parts per billion (ppb) criterion otherwise established by this section, but shall not be lower than the natural conditions of the Everglades Protection Area and shall take into account spatial and temporal variability. The department's rule adopting a phosphorus criterion may include moderating provisions during the implementation of the initial phase of the Long-Term Plan authorizing discharges based upon BAPRT providing net improvement to impacted areas. Discharges to unimpacted areas may also be authorized by moderating provisions, which shall require BAPRT, and which must be based upon a determination by the department that the environmental benefits of the discharge clearly outweigh potential adverse impacts and otherwise comply with antidegradation requirements. Moderating provisions authorized by this section shall not extend beyond December 2016 unless further authorized by the Legislature.

3. The department shall use the best available information to define relationships between waters discharged to, and the resulting water quality in, the Everglades Protection Area. The department or the district shall use these relationships to establish discharge limits in permits for discharges into the EAA canals and the Everglades Protection Area necessary to prevent an imbalance in the natural populations of aquatic flora or fauna in the Everglades Protection Area, and to provide a net improvement in the areas already impacted. During the implementation of the initial phase of the Long-Term Plan, permits issued by the department shall be based on BAPRT and shall include technology-based effluent limitations consistent with the Long-Term Plan. Compliance with the phosphorus criterion shall be based upon a long-term geometric mean of concentration levels to be measured at sampling stations recognized from the research to be reasonably representative of receiving waters in the Everglades Protection Area, and so located so as to assure that the Everglades Protection Area is not altered so as to cause an imbalance in natural populations of aquatic flora and fauna and to assure a net improvement in the areas already impacted. For the

Everglades National Park and the Arthur R. Marshall Loxahatchee National Wildlife Refuge, the method for measuring compliance with the phosphorus criterion shall be in a manner consistent with Appendices A and B, respectively, of the settlement agreement dated July 26, 1991, entered in case No. 88-1886-Civ-Hoeveler, United States District Court for the Southern District of Florida, that recognizes and provides for incorporation of relevant research.

4. The department's evaluation of any other water quality standards must include the department's antidegradation standards and EAA canal classifications. In recognition of the special nature of the conveyance canals of the EAA, as a component of the classification process, the department is directed to formally recognize by rulemaking existing actual beneficial uses of the conveyance canals in the EAA. This shall include recognition of the Class III designated uses of recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife, the integrated water management purposes for which the Central and Southern Florida Flood Control Project was constructed, flood control, conveyance of water to and from Lake Okeechobee for urban and agricultural water supply, Everglades hydroperiod restoration, conveyance of water to the STAs, and navigation.

(f) *EAA best management practices.—*

1. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the effectiveness of the BMPs in achieving and maintaining compliance with state water quality standards and restoring and maintaining designated and existing beneficial uses. The program shall include an analysis of the effectiveness of the BMPs in treating constituents that are not being significantly improved by the STAs. The monitoring program shall include monitoring of appropriate parameters at representative locations.

2. The district shall continue to require and enforce the BMP and other requirements of chapters 40E-61 and 40E-63, Florida Administrative Code, during the terms of the existing permits issued pursuant to those rules. Chapter 40E-61, Florida Administrative Code, may be amended to include the BMPs required by chapter 40E-63, Florida Administrative Code. Prior to the expiration of existing permits, and during each 5-year term of subsequent permits as provided for in this section, those rules shall be amended to implement a comprehensive program of research, testing, and implementation of BMPs that will address all water quality standards within the EAA and Everglades Protection Area. Under this program:

a. EAA landowners, through the EAA Environmental Protection District or otherwise, shall sponsor a program of BMP research with qualified experts to identify appropriate BMPs.

b. Consistent with the water quality monitoring program, BMPs will be field-tested in a sufficient number of representative sites in the EAA to reflect soil and crop types and other factors that influence BMP design and effectiveness.

c. BMPs as required for varying crops and soil types shall be included in permit conditions in the 5-year permits issued pursuant to this section.

d. The district shall conduct research in cooperation with EAA landowners to identify water quality parameters that are not being significantly improved either by the STAs or the BMPs, and to identify further BMP strategies needed to address these parameters.

3. The Legislature finds that through the implementation of the Everglades BMPs Program and the implementation of the Everglades Construction Project, reasonable further progress will be made towards addressing water quality requirements of the EAA canals and the Everglades Protection Area. Permittees within the EAA and the C-139 Basin who are in full compliance with the conditions of permits under chapters 40E-61 and 40E-63, Florida Administrative Code, have made all payments required under the Everglades Program, and are in compliance with subparagraph (a)7., if applicable, shall not be required to implement additional water quality improvement measures, prior to December 31, 2006, other than those required by subparagraph 2., with the following exceptions:

a. Nothing in this subparagraph shall limit the existing authority of the department or the district to limit or regulate discharges that pose a significant danger to the public health and safety; and

b. New land uses and new stormwater management facilities other than alterations to existing agricultural stormwater management systems for water quality improvements shall not be accorded the compliance established by this section. Permits may be required to implement improvements or alterations to existing agricultural water management systems.

4. As of December 31, 2006, all permits, including those issued prior to that date, shall require implementation of additional water quality measures, taking into account the water quality treatment actually provided by the STAs and the effectiveness of the BMPs. As of that date, no permittee's discharge shall cause or contribute to any violation of water quality standards in the Everglades Protection Area.

5. Effective immediately, landowners within the C-139 Basin shall not collectively exceed an annual average loading of phosphorus based proportionately on the historical rainfall for the C-139 Basin over the period of October 1, 1978, to September 30, 1988. New surface inflows shall not increase the annual average loading of phosphorus stated above. Provided that the C-139 Basin does not exceed this annual average loading, all landowners within the Basin shall be in compliance for that year. Compliance determinations for individual landowners within the C-139 Basin for remedial action, if the Basin is determined by the district to be out of compliance for that year, shall be based on the landowners' proportional share of the total phosphorus loading. The total phosphorus discharge load shall be determined as set forth in Appendix B2 of Rule 40E-63, Everglades Program, Florida Administrative Code.

6. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the quality of the discharge from the C-139 Basin. Upon determination by the department or the district that the C-139 Basin is exceeding any presently existing water quality standards, the district shall require landowners within the C-139 Basin to implement BMPs appropriate to the land uses within the C-139 Basin consistent with subparagraph 2. Thereafter, the provisions of subparagraphs 2.-4. shall apply to the landowners within the C-139 Basin.

(g) *Monitoring and control of exotic species.*—

1. The district shall establish a biological monitoring network throughout the Everglades Protection Area and shall prepare a survey of exotic species at least every 2 years.

2. In addition, the district shall establish a program to coordinate with federal, state, or other governmental entities the control of continued expansion and the removal of these exotic species. The district's program shall give high priority to species affecting the largest areal extent within the Everglades Protection Area.

(h) *Use attainability analysis.*—After completion of all projects and improvements in the Long-Term Plan, the district shall complete a use attainability analysis to determine if those projects and improvements will achieve the water-quality-based effluent limits established in permits and orders authorizing the operation of those facilities.

(5) ACQUISITION AND LEASE OF STATE LANDS.—

(a) As used in this subsection, the term:

1. "Available land" means land within the EAA owned by the board of trustees which is covered by any of the following leases: Numbers 3543, 3420, 1447, 1971-5, and 3433, and the southern one-third of number 2376 constituting 127 acres, more or less.

2. "Board of trustees" means the Board of Trustees of the Internal Improvement Trust Fund.

3. "Designated acre," as to any impacted farmer, means an acre of land which is designated for STAs or water retention or storage in the February 15, 1994, conceptual design document and which is owned or leased by the farmer or on which one or more agricultural products were produced which, during the period beginning October 1, 1992, and ending September 30, 1993, were processed at a facility owned by the farmer.

4. "Impacted farmer" means a producer or processor of agricultural commodities and includes subsidiaries and affiliates that have designated acres.

5. "Impacted vegetable farmer" means an impacted farmer in the EAA who uses more than 30 percent of the land farmed by that farmer, whether owned or leased, for the production of vegetables.

6. "Vegetable-area available land" means land within the EAA owned by the board of trustees which is covered by lease numbers 3422 and 1935/1935S.

(b) The Legislature declares that it is necessary for the public health and welfare that the Everglades water and water-related resources be conserved and protected. The Legislature further declares that certain lands may be needed for the treatment or storage of water prior to its release into the Everglades Protection Area. The acquisition of real property for this objective constitutes a public purpose for which public funds may be expended. In addition to other authority pursuant to this chapter to acquire real property, the governing board of the district is empowered and authorized to acquire fee title or easements by eminent domain for the limited purpose of implementing stormwater

management systems, identified and described in the Everglades Construction Project or determined necessary to meet water quality requirements established by rule or permit.

(c) The Legislature determines it to be in the public interest to minimize the potential loss of land and related product supply to farmers and processors who are most affected by acquisition of land for Everglades restoration and hydroperiod purposes. Accordingly, subject to the priority established below for vegetable-area available land, impacted farmers shall have priority in the leasing of available land. An impacted farmer shall have the right to lease each parcel of available land, upon expiration of the existing lease, for a term of 20 years and at a rental rate determined by appraisal using established state procedures. For those parcels of land that have previously been competitively bid, the rental rate shall not be less than the rate the board of trustees currently receives. The board of trustees may also adjust the rental rate on an annual basis using an appropriate index, and update the appraisals at 5-year intervals. If more than one impacted farmer desires to lease a particular parcel of available land, the one that has the greatest number of designated acres shall have priority.

(d) Impacted vegetable farmers shall have priority in leasing vegetable-area available land. An impacted vegetable farmer shall have the right to lease vegetable-area available land, upon expiration of the existing lease, for a term of 20 years or a term ending August 25, 2018, whichever term first expires, and at a rental rate determined by appraisal using established state procedures. If the lessee elects, such terms may consist of an initial 5-year term, with successive options to renew at the lessee's option for additional 5-year terms. For extensions of leases on those parcels of land that have previously been competitively bid, the rental rate shall not be less than the rate the board of trustees currently receives. The board of trustees may also adjust the rental rate on an annual basis using an appropriate index, and update the appraisals at 5-year intervals. If more than one impacted vegetable farmer desires to lease vegetable-area available land, the one that has the greatest number of designated acres shall have priority.

(e) Impacted vegetable farmers with farming operations in areas of Florida other than the EAA shall have priority in leasing suitable surplus lands, where such lands are located in the St. Johns River Water Management District and in the vicinity of the other areas where such impacted vegetable farmers operate. The suitability of such use shall be determined solely by the St. Johns River Water Management District. The St. Johns River Water Management District shall make good faith efforts to provide these impacted vegetable farmers with the opportunity to lease such suitable lands to offset their designated acres. The rental rate shall be determined by appraisal using established procedures.

(f) The corporation conducting correctional work programs under part II of chapter 946 shall be entitled to renew, for a period of 20 years, its lease with the Department of Corrections which expires June 30, 1998, which includes the utilization of land for the production of sugar cane, and which is identified as lease number 2671 with the board of trustees.

(g) Except as specified in paragraph (f), once the leases or lease extensions specified in this subsection have been granted and become effective, the trustees shall retain the authority to terminate after 9 years any such lease or lease extension upon 2 years' notice to the lessee and a finding by the trustees that the lessee has ceased to be impacted as provided in this section. In that event, the outgoing lessee is entitled to be compensated for any documented, unamortized planting costs associated with the lease and any unamortized capital costs incurred prior to the notice. In addition, the trustees may terminate such lease or lease extension if the lessee fails to comply with, and after reasonable notice and opportunity to correct or fails to correct, any material provision of the lease or its obligation under this section.

(6) EVERGLADES AGRICULTURAL PRIVILEGE TAX.—

(a) There is hereby imposed an annual Everglades agricultural privilege tax for the privilege of conducting an agricultural trade or business on:

1. All real property located within the EAA that is classified as agricultural under the provisions of chapter 193; and

2. Leasehold or other interests in real property located within the EAA owned by the United States, the state, or any agency thereof permitting the property to be used for agricultural purposes in a manner that would allow such property to be classified as agricultural under the provisions of chapter 193 if not governmentally owned, whether or not such property is actually classified as agricultural under the provisions of chapter 193.

It is hereby determined by the Legislature that the privilege of conducting an agricultural trade or business on such property constitutes a reasonable basis for imposition of the Everglades agricultural privilege tax and that logical differences exist between the agricultural use of such property and the use of other property within the EAA for residential or nonagricultural commercial use. The Everglades agricultural privilege tax shall constitute a lien against the property, or the leasehold or other interest in governmental property permitting such property to be used for agricultural purposes, described on the Everglades agricultural privilege tax roll. The lien shall be in effect from January 1 of the year the tax notice is mailed until discharged by payment and shall be equal in rank and dignity with the liens of all state, county, district, or municipal taxes and non-ad valorem assessments imposed pursuant to general law, special act, or local ordinance and shall be superior in dignity to all other liens, titles, and claims.

(b) The Everglades agricultural privilege tax, other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, shall be collected in the manner provided for ad valorem taxes. By September 15 of each year, the governing board of the district shall certify by resolution an Everglades agricultural privilege tax roll on compatible electronic medium to the tax collector of each county in which a portion of the EAA is located. The district shall also produce one copy of the roll in printed form which shall be available for inspection by the public. The district shall post the Everglades agricultural privilege tax for each parcel on the roll. The tax collector shall not accept any such roll that is not certified on compatible electronic medium and that does not contain the posting of the Everglades agricultural privilege tax for each parcel. It is the responsibility of the district that such rolls be free of errors and omissions. Alterations to such rolls may be made by the executive director of the district, or a designee, up to 10 days before certification. If the tax collector or any taxpayer discovers errors or omissions on such roll, such person may request the district to file a corrected roll or a correction of the amount of any Everglades agricultural privilege tax. Other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, Everglades agricultural privilege taxes collected pursuant to this section shall be included in the combined notice for ad valorem taxes and non-ad valorem assessments provided for in s. 197.3635. Such Everglades agricultural privilege taxes shall be listed in the portion of the combined notice utilized for non-ad valorem assessments. A separate mailing is authorized only as a solution to the most exigent factual circumstances. However, if a tax collector cannot merge an Everglades agricultural privilege tax roll to produce such a notice, the tax collector shall mail a separate notice of Everglades agricultural privilege taxes or shall direct the district to mail such a separate notice. In deciding whether a separate mailing is necessary, the tax collector shall consider all costs to the district and taxpayers of such a separate mailing and the adverse effects to the taxpayers of delayed and multiple notices. The district shall bear all costs associated with any separate notice. Everglades agricultural privilege taxes collected pursuant to this section shall be subject to all collection provisions of chapter 197, including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment. Everglades agricultural privilege taxes for leasehold or other interests in property owned by the United States, the state, or any agency thereof permitting such property to be used for agricultural purposes shall be included on the notice provided pursuant to s. 196.31, a copy of which shall be provided to lessees or other interestholders registering with the district, and shall be collected from the lessee or other appropriate interestholder and remitted to the district immediately upon collection. Everglades agricultural privilege taxes included on the statement provided pursuant to s. 196.31 shall be due and collected on or prior to the next April 1 following provision of the notice. Proceeds of the Everglades agricultural privilege taxes shall be distributed by the tax collector to the district. Each tax collector shall be paid a commission equal to the actual cost of collection, not to exceed 2 percent, on the amount of Everglades agricultural privilege taxes collected and remitted. Notwithstanding any general law or special act to the contrary, Everglades agricultural privilege taxes shall not be included on the notice of proposed property taxes provided for in s. 200.069.

(c) The initial Everglades agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. Incentive credits to the Everglades agricultural privilege taxes to be included on the initial Everglades agricultural privilege tax roll, if any, shall be based upon the total phosphorus load reduction for the year ending April 30, 1993. The Everglades agricultural privilege taxes for each year shall be computed in the following manner:

1. Annual Everglades agricultural privilege taxes shall be charged for the privilege of conducting an agricultural trade or business on each acre of real property or portion thereof. The annual Everglades agricultural privilege tax shall be $24.89 per acre for the tax notices mailed in November 1994 through November 1997; $27 per acre for the tax notices mailed in November 1998 through November 2001; $31 per acre for the tax notices mailed in November 2002 through November 2005; and $35 per acre for the tax notices mailed in November 2006 through November 2013.

2. It is the intent of the Legislature to encourage the performance of best management practices to maximize the reduction of phosphorus loads at points of discharge from the EAA by providing an incentive credit against the Everglades agricultural privilege taxes set forth in subparagraph 1. The total phosphorus load reduction shall be measured for the entire EAA by comparing the actual measured total phosphorus load attributable to the EAA for each annual period ending on April 30 to the total estimated phosphorus load that would have occurred during the 1979-1988 base period using the model for total phosphorus load determinations provided in chapter 40E-63, Florida Administrative Code, utilizing the technical information and procedures contained in Section IV-EAA Period of Record Flow and Phosphorus Load Calculations; Section V-Monitoring Requirements; and Section VI-Phosphorus Load Allocations and Compliance Calculations of the Draft Technical Document in Support of chapter 40E-63, Florida Administrative Code - Works of the District within the Everglades, March 3, 1992, and the Standard Operating Procedures for Water Quality Collection in Support of the Everglades Water Condition Report, dated February 18, 1994. The model estimates the total phosphorus load that would have occurred during the 1979-1988 base period by substituting the rainfall conditions for such annual period ending April 30 for the conditions that were used to calibrate the model for the 1979-1988 base period. The data utilized to calculate the actual loads attributable to the EAA shall be adjusted to eliminate the effect of any load and flow that were not included in the 1979-1988 base period as defined in chapter 40E-63, Florida Administrative Code. The incorporation of the method of measuring the total phosphorus load reduction provided in this subparagraph is intended to provide a legislatively approved aid to the governing board of the district in making an annual ministerial determination of any incentive credit.

3. Phosphorus load reductions calculated in the manner described in subparagraph 2. and rounded to the nearest whole percentage point for each annual period beginning on May 1 and ending on April 30 shall be used to compute incentive credits to the Everglades agricultural privilege taxes to be included on the annual tax notices mailed in November of the next ensuing calendar year. Incentive credits, if any, will reduce the Everglades agricultural privilege taxes set forth in subparagraph 1. only to the extent that the phosphorus load reduction exceeds 25 percent. Subject to subparagraph 4., the reduction of phosphorus load by each percentage point in excess of 25 percent, computed for the 12-month period ended on April 30 of the calendar year immediately preceding certification of the Everglades agricultural privilege tax, shall result in the following incentive credits: $0.33 per acre for the tax notices mailed in November 1994 through November 1997; $0.54 per acre for the tax notices mailed in November 1998 through November 2001; $0.61 per acre for the tax notices mailed in November 2002 through November 2005, and $0.65 per acre for the tax notices mailed in November 2006 through November 2013. The determination of incentive credits, if any, shall be documented by resolution of the governing board of the district adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

4. Notwithstanding subparagraph 3., incentive credits for the performance of best management practices shall not reduce the minimum annual Everglades agricultural privilege tax to less than $24.89 per acre, which annual Everglades agricultural privilege tax as adjusted in the manner required by paragraph (e) shall be known as the "minimum tax." To the extent that the application of incentive credits for the performance of best management practices would reduce the annual Everglades agricultural privilege tax to an amount less than the minimum tax, then the unused or excess incentive credits for the performance of best management practices shall be carried forward, on a phosphorus load percentage basis, to be applied as incentive credits in subsequent years. Any unused or excess incentive credits remaining after certification of the Everglades agricultural privilege tax roll for the tax notices mailed in November 2013 shall be canceled.

5. Notwithstanding the schedule of Everglades agricultural privilege taxes set forth in subparagraph 1., the owner, lessee, or other appropriate interestholder of any property shall be entitled to have the Everglades agricultural privilege tax for any parcel of property reduced to the minimum tax, commencing with the tax notices mailed in

November 1996 for parcels of property participating in the early baseline option as defined in chapter 40E-63, Florida Administrative Code, and with the tax notices mailed in November 1997 for parcels of property not participating in the early baseline option, upon compliance with the requirements set forth in this subparagraph. The owner, lessee, or other appropriate interestholder shall file an application with the executive director of the district prior to July 1 for consideration of reduction to the minimum tax on the Everglades agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and shall have the burden of proving the reduction in phosphorus load attributable to such parcel of property. The phosphorus load reduction for each discharge structure serving the parcel shall be measured as provided in chapter 40E-63, Florida Administrative Code, and the permit issued for such property pursuant to chapter 40E-63, Florida Administrative Code. A parcel of property which has achieved the following annual phosphorus load reduction standards shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year: 30 percent or more for the tax notices mailed in November 1994 through November 1997; 35 percent or more for the tax notices mailed in November 1998 through November 2001; 40 percent or more for the tax notices mailed in November 2002 through November 2005; and 45 percent or more for the tax notices mailed in November 2006 through November 2013. In addition, any parcel of property that achieves an annual flow weighted mean concentration of 50 parts per billion (ppb) of phosphorus at each discharge structure serving the property for any year ending April 30 shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year. Any annual phosphorus reductions that exceed the amount necessary to have the minimum tax included on the annual tax notice for any parcel of property shall be carried forward to the subsequent years' phosphorus load reduction to determine if the minimum tax shall be included on the annual tax notice. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

6. The annual Everglades agricultural privilege tax shall be: for the tax notices mailed in November 2014 through November 2026, $25 per acre; for the tax notices mailed in November 2027 through 2029, $20 per acre; for the tax notices mailed in November 2030 through 2035, $15 per acre; and for the tax notices mailed in November 2036 and thereafter, $10 per acre. Proceeds from the tax shall be used for design, construction, and implementation of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in the Long-Term Plan, including the enhancements and operation and maintenance of the Everglades Construction Project.

(d) For purposes of this paragraph, "vegetable acreage" means, for each tax year, any portion of a parcel of property used for a period of not less than 8 months for the production of vegetable crops, including sweet corn, during the 12 months ended September 30 of the year preceding the tax year. Land preparation, crop rotation, and fallow periods shall not disqualify property from classification as vegetable acreage if such property is actually used for the production of vegetable crops.

1. It is hereby determined by the Legislature that vegetable farming in the EAA is subject to volatile market conditions and is particularly subject to crop loss or damage due to freezes, flooding, and drought. It is further determined by the Legislature that, due to the foregoing factors, imposition of an Everglades agricultural privilege tax upon vegetable acreage in excess of the minimum tax could create a severe economic hardship and impair the production of vegetable crops. Notwithstanding the schedule of Everglades agricultural privilege taxes set forth in subparagraph (c)1., the Everglades agricultural privilege tax for vegetable acreage shall be the minimum tax, and vegetable acreage shall not be entitled to any incentive credits.

2. If either the Governor, the President of the United States, or the United States Department of Agriculture declares the existence of a state of emergency or disaster resulting from extreme natural conditions impairing the ability of vegetable acreage to produce crops, payment of the Everglades agricultural privilege taxes imposed for the privilege of conducting an agricultural trade or business on such property shall be deferred for a period of 1 year, and all subsequent annual payments shall be deferred for the same period.

a. If the declaration occurs between April 1 and October 31, the Everglades agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

b. If the declaration occurs between November 1 and March 31 and the Everglades agricultural privilege tax included on the most recent tax notice has not been paid, such Everglades agricultural privilege tax will be deferred to

the next annual tax notice.

c. If the declaration occurs between November 1 and March 31 and the Everglades agricultural privilege tax included on the most recent tax notice has been paid, the Everglades agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

3. In the event payment of Everglades agricultural privilege taxes is deferred pursuant to this paragraph, the district must record a notice in the official records of each county in which vegetable acreage subject to such deferment is located. The recorded notice must describe each parcel of property as to which Everglades agricultural privilege taxes have been deferred and the amount deferred for such property. If all or any portion of the property as to which Everglades agricultural privilege taxes have been deferred ceases to be classified as agricultural under the provisions of chapter 193 or otherwise subject to the Everglades agricultural privilege tax, all deferred amounts must be included on the tax notice for such property mailed in November of the first tax year for which such property is not subject to the Everglades agricultural privilege tax. After a property owner has paid all outstanding Everglades agricultural privilege taxes, including any deferred amounts, the district shall provide the property owner with a recordable instrument evidencing the payment of all outstanding amounts.

4. The owner, lessee, or other appropriate interestholder must file an application with the executive director of the district prior to July 1 for classification of a portion of the property as vegetable acreage on the Everglades agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and shall have the burden of proving the number of acres used for the production of vegetable crops during the year in which incentive credits are determined and the period of such use. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

5. This paragraph does not relieve vegetable acreage from the performance of best management practices specified in chapter 40E-63, Florida Administrative Code.

(e) If, for any tax year, the number of acres subject to the Everglades agricultural privilege tax is less than the number of acres included on the Everglades agricultural privilege tax roll certified for the tax notices mailed in November 1994, the minimum tax shall be subject to increase in the manner provided in this paragraph. In determining the number of acres subject to the Everglades agricultural privilege tax for purposes of this paragraph, property acquired by a not-for-profit entity for purposes of conservation and preservation, the United States, or the state, or any agency thereof, and removed from the Everglades agricultural privilege tax roll after January 1, 1994, shall be treated as subject to the tax even though no tax is imposed or due: in its entirety, for tax notices mailed prior to November 2000; to the extent its area exceeds 4 percent of the total area of property subject to the Everglades agricultural tax, for tax notices mailed in November 2000 through November 2005; and to the extent its area exceeds 8 percent of the total area of property subject to the Everglades agricultural tax, for tax notices mailed in November 2006 and thereafter. For each tax year, the district shall determine the amount, if any, by which the sum of the following exceeds $12,367,000:

1. The product of the minimum tax multiplied by the number of acres subject to the Everglades agricultural privilege tax; and

2. The ad valorem tax increment, as defined in this subparagraph.

The aggregate of such annual amounts, less any portion previously applied to eliminate or reduce future increases in the minimum tax, as described in this paragraph, shall be known as the "excess tax amount." If for any tax year, the amount computed by multiplying the minimum tax by the number of acres then subject to the Everglades agricultural privilege tax is less than $12,367,000, the excess tax amount shall be applied in the following manner. If the excess tax amount exceeds such difference, an amount equal to the difference shall be deducted from the excess tax amount and applied to eliminate any increase in the minimum tax. If such difference exceeds the excess tax amount, the excess tax amount shall be applied to reduce any increase in the minimum tax. In such event, a new minimum tax shall be computed by subtracting the remaining excess tax amount from $12,367,000 and dividing the result by the number of acres subject to the Everglades agricultural privilege tax for such tax year. For purposes of this paragraph, the "ad valorem tax increment" means 50 percent of the difference between the amount of ad valorem taxes actually imposed

by the district for the immediate prior tax year against property included on the Everglades agricultural privilege tax roll certified for the tax notices mailed in November 1994 that was not subject to the Everglades agricultural privilege tax during the immediate prior tax year and the amount of ad valorem taxes that would have been imposed against such property for the immediate prior tax year if the taxable value of each acre had been equal to the average taxable value of all other land classified as agricultural within the EAA for such year; however, the ad valorem tax increment for any year shall not exceed the amount that would have been derived from such property from imposition of the minimum tax during the immediate prior tax year.

(f) Any owner, lessee, or other appropriate interestholder of property subject to the Everglades agricultural privilege tax may contest the Everglades agricultural privilege tax by filing an action in circuit court.

1. No action may be brought to contest the Everglades agricultural privilege tax after 60 days from the date the tax notice that includes the Everglades agricultural privilege tax is mailed by the tax collector. Before an action to contest the Everglades agricultural privilege tax may be brought, the taxpayer shall pay to the tax collector the amount of the Everglades agricultural privilege tax which the taxpayer admits in good faith to be owing. The tax collector shall issue a receipt for the payment, and the receipt shall be filed with the complaint. Payment of an Everglades agricultural privilege tax shall not be deemed an admission that such tax was due and shall not prejudice the right to bring a timely action to challenge such tax and seek a refund. No action to contest the Everglades agricultural privilege tax may be maintained, and such action shall be dismissed, unless all Everglades agricultural privilege taxes imposed in years after the action is brought, which the taxpayer in good faith admits to be owing, are paid before they become delinquent. The requirements of this subparagraph are jurisdictional.

2. In any action involving a challenge of the Everglades agricultural privilege tax, the court shall assess all costs. If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 12 percent per year from the date the tax became delinquent. If it finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due and that the taxpayer's admission was not made in good faith, the court shall also assess a penalty at the rate of 25 percent of the deficiency per year from the date the tax became delinquent. The court may issue injunctions to restrain the sale of property for any Everglades agricultural privilege tax which appears to be contrary to law or equity.

(g) Notwithstanding any contrary provisions in chapter 120, or any provision of any other law, an action in circuit court shall be the exclusive remedy to challenge the assessment of an Everglades agricultural privilege tax and owners of property subject to the Everglades agricultural privilege tax shall have no right or standing to initiate administrative proceedings under chapter 120 to challenge the assessment of an Everglades agricultural privilege tax, including specifically, and without limitation, the annual certification by the district governing board of the Everglades agricultural privilege tax roll to the appropriate tax collector, the annual calculation of any incentive credit for phosphorus level reductions, the denial of an application for exclusion from the Everglades agricultural privilege tax, the calculation of the minimum tax adjustments provided in paragraph (e), the denial of an application for reduction to the minimum tax, and the denial of any application for classification as vegetable acreage, deferment of payment for vegetable acreage, or correction of any alleged error in the Everglades agricultural privilege tax roll.

(h) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the Everglades agricultural privilege tax is a matter of concern to all areas of Florida. The Legislature intends this act to be a general law authorization of the Everglades agricultural privilege tax within the meaning of s. 9, Art. VII of the State Constitution and further intends that payment of the tax, in addition to payment of the cost of continuing implementation of BMPs, fulfills the obligations of owners and users of land under s. 7(b), Art. II of the State Constitution.

(7) C-139 AGRICULTURAL PRIVILEGE TAX.—

(a) There is hereby imposed an annual C-139 agricultural privilege tax for the privilege of conducting an agricultural trade or business on:

1. All real property located within the C-139 Basin that is classified as agricultural under the provisions of chapter 193; and

2. Leasehold or other interests in real property located within the C-139 Basin owned by the United States, the state, or any agency thereof permitting the property to be used for agricultural purposes in a manner that would result in such property being classified as agricultural under the provisions of chapter 193 if not governmentally owned, whether or not such property is actually classified as agricultural under the provisions of chapter 193.

It is hereby determined by the Legislature that the privilege of conducting an agricultural trade or business on such property constitutes a reasonable basis for imposing the C-139 agricultural privilege tax and that logical differences exist between the agricultural use of such property and the use of other property within the C-139 Basin for residential or nonagricultural commercial use. The C-139 agricultural privilege tax shall constitute a lien against the property, or the leasehold or other interest in governmental property permitting such property to be used for agricultural purposes, described on the C-139 agricultural privilege tax roll. The lien shall be in effect from January 1 of the year the tax notice is mailed until discharged by payment and shall be equal in rank and dignity with the liens of all state, county, district, or municipal taxes and non-ad valorem assessments imposed pursuant to general law, special act, or local ordinance and shall be superior in dignity to all other liens, titles, and claims.

(b) The C-139 agricultural privilege tax, other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, shall be collected in the manner provided for ad valorem taxes. By September 15 of each year, the governing board of the district shall certify by resolution a C-139 agricultural privilege tax roll on compatible electronic medium to the tax collector of each county in which a portion of the C-139 Basin is located. The district shall also produce one copy of the roll in printed form which shall be available for inspection by the public. The district shall post the C-139 agricultural privilege tax for each parcel on the roll. The tax collector shall not accept any such roll that is not certified on compatible electronic medium and that does not contain the posting of the C-139 agricultural privilege tax for each parcel. It is the responsibility of the district that such rolls be free of errors and omissions. Alterations to such rolls may be made by the executive director of the district, or a designee, up to 10 days before certification. If the tax collector or any taxpayer discovers errors or omissions on such roll, such person may request the district to file a corrected roll or a correction of the amount of any C-139 agricultural privilege tax. Other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, C-139 agricultural privilege taxes collected pursuant to this section shall be included in the combined notice for ad valorem taxes and non-ad valorem assessments provided for in s. 197.3635. Such C-139 agricultural privilege taxes shall be listed in the portion of the combined notice utilized for non-ad valorem assessments. A separate mailing is authorized only as a solution to the most exigent factual circumstances. However, if a tax collector cannot merge a C-139 agricultural privilege tax roll to produce such a notice, the tax collector shall mail a separate notice of C-139 agricultural privilege taxes or shall direct the district to mail such a separate notice. In deciding whether a separate mailing is necessary, the tax collector shall consider all costs to the district and taxpayers of such a separate mailing and the adverse effects to the taxpayers of delayed and multiple notices. The district shall bear all costs associated with any separate notice. C-139 agricultural privilege taxes collected pursuant to this section shall be subject to all collection provisions of chapter 197, including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment. C-139 agricultural privilege taxes for leasehold or other interests in property owned by the United States, the state, or any agency thereof permitting such property to be used for agricultural purposes shall be included on the notice provided pursuant to s. 196.31, a copy of which shall be provided to lessees or other interestholders registering with the district, and shall be collected from the lessee or other appropriate interestholder and remitted to the district immediately upon collection. C-139 agricultural privilege taxes included on the statement provided pursuant to s. 196.31 shall be due and collected on or prior to the next April 1 following provision of the notice. Proceeds of the C-139 agricultural privilege taxes shall be distributed by the tax collector to the district. Each tax collector shall be paid a commission equal to the actual cost of collection, not to exceed 2 percent, on the amount of C-139 agricultural privilege taxes collected and remitted. Notwithstanding any general law or special act to the contrary, C-139 agricultural privilege taxes shall not be included on the notice of proposed property taxes provided in s. 200.069.

(c)1. The initial C-139 agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. The C-139 agricultural privilege taxes for the tax notices mailed in November 1994 through November 2002 shall be computed by dividing $654,656 by the number of acres included on the C-139 agricultural privilege tax roll for such year, excluding any property located within the C-139 Annex.

2. The C-139 agricultural privilege taxes for the tax notices mailed in November 2003 through November 2013 shall be computed by dividing $654,656 by the number of acres included on the C-139 agricultural privilege tax roll for November 2001, excluding any property located within the C-139 Annex.

3. The C-139 agricultural privilege taxes for the tax notices mailed in November 2014 and thereafter shall be $1.80 per acre.

(d) For purposes of this paragraph, "vegetable acreage" means, for each tax year, any portion of a parcel of property used for a period of not less than 8 months for the production of vegetable crops, including sweet corn, during the 12 months ended September 30 of the year preceding the tax year. Land preparation, crop rotation, and fallow periods shall not disqualify property from classification as vegetable acreage if such property is actually used for the production of vegetable crops.

1. If either the Governor, the President of the United States, or the United States Department of Agriculture declares the existence of a state of emergency or disaster resulting from extreme natural conditions impairing the ability of vegetable acreage to produce crops, payment of the C-139 agricultural privilege taxes imposed for the privilege of conducting an agricultural trade or business on such property shall be deferred for a period of 1 year, and all subsequent annual payments shall be deferred for the same period.

a. If the declaration occurs between April 1 and October 31, the C-139 agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

b. If the declaration occurs between November 1 and March 31 and the C-139 agricultural privilege tax included on the most recent tax notice has not been paid, such C-139 agricultural privilege tax will be deferred to the next annual tax notice.

c. If the declaration occurs between November 1 and March 31 and the C-139 agricultural privilege tax included on the most recent tax notice has been paid, the C-139 agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

2. In the event payment of C-139 agricultural privilege taxes is deferred pursuant to this paragraph, the district must record a notice in the official records of each county in which vegetable acreage subject to such deferment is located. The recorded notice must describe each parcel of property as to which C-139 agricultural privilege taxes have been deferred and the amount deferred for such property. If all or any portion of the property as to which C-139 agricultural privilege taxes have been deferred ceases to be classified as agricultural under the provisions of chapter 193 or otherwise subject to the C-139 agricultural privilege tax, all deferred amounts must be included on the tax notice for such property mailed in November of the first tax year for which such property is not subject to the C-139 agricultural privilege tax. After a property owner has paid all outstanding C-139 agricultural privilege taxes, including any deferred amounts, the district shall provide the property owner with a recordable instrument evidencing the payment of all outstanding amounts.

3. The owner, lessee, or other appropriate interestholder shall file an application with the executive director of the district prior to July 1 for classification of a portion of the property as vegetable acreage on the C-139 agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and shall have the burden of proving the number of acres used for the production of vegetable crops during the year in which incentive credits are determined and the period of such use. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual C-139 agricultural privilege tax roll to the appropriate tax collector.

4. This paragraph does not relieve vegetable acreage from the performance of best management practices specified in chapter 40E-63, Florida Administrative Code.

(e) Any owner, lessee, or other appropriate interestholder of property subject to the C-139 agricultural privilege tax may contest the C-139 agricultural privilege tax by filing an action in circuit court.

1. No action may be brought to contest the C-139 agricultural privilege tax after 60 days from the date the tax notice that includes the C-139 agricultural privilege tax is mailed by the tax collector. Before an action to contest the C-139 agricultural privilege tax may be brought, the taxpayer shall pay to the tax collector the amount of the C-139 agricultural privilege tax which the taxpayer admits in good faith to be owing. The tax collector shall issue a receipt for the payment and the receipt shall be filed with the complaint. Payment of an C-139 agricultural privilege tax shall not be deemed an admission that such tax was due and shall not prejudice the right to bring a timely action to challenge such tax and seek a refund. No action to contest the C-139 agricultural privilege tax may be maintained, and such action shall be dismissed, unless all C-139 agricultural privilege taxes imposed in years after the action is brought, which the taxpayer in good faith admits to be owing, are paid before they become delinquent. The requirements of this paragraph are jurisdictional.

2. In any action involving a challenge of the C-139 agricultural privilege tax, the court shall assess all costs. If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 12 percent per year from the date the tax became delinquent. If it finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due and that the taxpayer's admission was not made in good faith, the court shall also assess a penalty at the rate of 25 percent of the deficiency per year from the date the tax became delinquent. The court may issue injunctions to restrain the sale of property for any C-139 agricultural privilege tax which appears to be contrary to law or equity.

(f) Notwithstanding any contrary provisions in chapter 120, or any provision of any other law, an action in circuit court shall be the exclusive remedy to challenge the assessment of an C-139 agricultural privilege tax and owners of property subject to the C-139 agricultural privilege tax shall have no right or standing to initiate administrative proceedings under chapter 120 to challenge the assessment of an C-139 agricultural privilege tax including specifically, and without limitation, the annual certification by the district governing board of the C-139 agricultural privilege tax roll to the appropriate tax collector, the denial of an application for exclusion from the C-139 agricultural privilege tax, and the denial of any application for classification as vegetable acreage, deferment of payment for vegetable acreage, or correction of any alleged error in the C-139 agricultural privilege tax roll.

(g) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the C-139 agricultural privilege tax is a matter of concern to all areas of Florida and the Legislature intends this section to be a general law authorization of the tax within the meaning of s. 9, Art. VII of the State Constitution.

(8) SPECIAL ASSESSMENTS.—

(a) In addition to any other legally available funding mechanism, the district may create, alone or in cooperation with counties, municipalities, and special districts pursuant to s. 163.01, the Florida Interlocal Cooperation Act of 1969, one or more stormwater management system benefit areas including property located outside the EAA and the C-139 Basin, and property located within the EAA and the C-139 Basin that is not subject to the Everglades agricultural privilege tax or the C-139 agricultural privilege tax. The district may levy special assessments within said benefit areas to fund the planning, acquisition, construction, financing, operation, maintenance, and administration of stormwater management systems for the benefited areas. Any benefit area in which property owners receive substantially different levels of stormwater management system benefits shall include stormwater management system benefit subareas within which different per acreage assessments shall be levied from subarea to subarea based upon a reasonable relationship to benefits received. The assessments shall be calculated to generate sufficient funds to plan, acquire, construct, finance, operate, and maintain the stormwater management systems authorized pursuant to this section.

(b) The district may use the non-ad valorem levy, collection, and enforcement method as provided in chapter 197 for assessments levied pursuant to paragraph (a).

(c) The district shall publish notice of the certification of the non-ad valorem assessment roll pursuant to chapter 197 in a newspaper of general circulation in the counties wherein the assessment is being levied, within 1 week after the district certifies the non-ad valorem assessment roll to the tax collector pursuant to s. 197.3632(5). The assessments levied pursuant to paragraph (a) shall be final and conclusive as to each lot or parcel unless the owner thereof shall, within 90 days of certification of the non-ad valorem assessment roll pursuant to s. 197.3632(5), commence an action in

circuit court. Absent such commencement of an action within such period of time by an owner of a lot or parcel, such owner shall thereafter be estopped to raise any question related to the special benefit afforded the property or the reasonableness of the amount of the assessment. Except with respect to an owner who has commenced such an action, the non-ad valorem assessment roll as finally adopted and certified by the South Florida Water Management District to the tax collector pursuant to s. 197.3632(5) shall be competent and sufficient evidence that the assessments were duly levied and that all other proceedings adequate to the adoption of the non-ad valorem assessment roll were duly held, taken, and performed as required by s. 197.3632. If any assessment is abated in whole or in part by the court, the amount by which the assessment is so reduced may, by resolution of the governing board of the district, be payable from funds of the district legally available for that purpose, or at the discretion of the governing board of the district, assessments may be increased in the manner provided in s. 197.3632.

(d) In no event shall the amount of funds collected for stormwater management facilities pursuant to paragraph (a) exceed the cost of providing water management attributable to water quality treatment resulting from the operation of stormwater management systems of the landowners to be assessed. Such water quality treatment may be required by the plan or permits issued by the district. Prior to the imposition of assessments pursuant to paragraph (a) for construction of new stormwater management systems or the acquisition of necessary land, the district shall establish the general purpose, design, and function of the new system sufficient to make a fair and reasonable determination of the estimated costs of water management attributable to water quality treatment resulting from operation of stormwater management systems of the landowners to be assessed. This determination shall establish the proportion of the total anticipated costs attributable to the landowners. In determining the costs to be imposed by assessments, the district shall consider the extent to which nutrients originate from external sources beyond the control of the landowners to be assessed. Costs for hydroperiod restoration within the Everglades Protection Area shall be provided by funds other than those derived from the assessments. The proportion of total anticipated costs attributable to the landowners shall be apportioned to individual landowners considering the factors specified in paragraph (e). Any determination made pursuant to this paragraph or paragraph (e) may be included in the plan or permits issued by the district.

(e) In determining the amount of any assessment imposed on an individual landowner under paragraph (a), the district shall consider the quality and quantity of the stormwater discharged by the landowner, the amount of treatment provided to the landowner, and whether the landowner has provided equivalent treatment or retention prior to discharge to the district's system.

(f) No assessment shall be imposed under this section for the operation or maintenance of a stormwater management system or facility for which construction has been completed on or before July 1, 1991, except to the extent that the operation or maintenance, or any modification of such system or facility, is required to provide water quality treatment.

(g) The district shall suspend, terminate, or modify projects and funding for such projects, as appropriate, if the projects are not achieving applicable goals specified in the plan.

(h) The Legislature hereby determines that any property owner who contributes to the need for stormwater management systems and programs, as determined for each individual property owner either through the plan or through permits issued to the district or to the property owner, is deemed to benefit from such systems and programs, and such benefits are deemed to be directly proportional to the relative contribution of the property owner to such need. The Legislature also determines that the issuance of a master permit provides benefits, through the opportunity to achieve collective compliance, for all persons within the area of the master permit which may be considered by the district in the imposition of assessments under this section.

(9) PERMITS.—

(a) The Legislature finds that construction and operation of the Everglades Construction Project will benefit the water resources of the district and is consistent with the public interest. The district shall construct, maintain, and operate the Everglades Construction Project in accordance with this section.

(b) The Legislature finds that there is an immediate need to initiate cleanup and restoration of the Everglades Protection Area through the Everglades Construction Project. In recognition of this need, the district may begin

construction of the Everglades Construction Project prior to final agency action, or notice of intended agency action, on any permit from the department under this section.

(c) The department may issue permits to the district to construct, operate, and maintain the Everglades Construction Project based on the criteria set forth in this section. The permits to be issued by the department to the district under this section shall be in lieu of other permits under this part or part VIII of chapter 403, 1992 Supplement to the Florida Statutes 1991.

(d) By June 1, 1994, the district shall apply to the department for a permit or permits for the construction, operation, and maintenance of the Everglades Construction Project. The district may comply with this paragraph by amending its pending Everglades permit application.

(e) The department shall issue a permit for a term of 5 years for the construction, operation, and maintenance of the Everglades Construction Project upon the district's providing reasonable assurances that:

1. The project will be constructed, operated, and maintained in accordance with the Everglades Construction Project;

2. The BMP program set forth in paragraph (4)(f) has been implemented; and

3. The final design of the Everglades Construction Project shall minimize wetland impacts, to the maximum extent practicable and consistent with the Everglades Construction Project.

(f) At least 60 days prior to the expiration of any permit issued under this section, the district may apply for renewal for a period of 5 years.

(g) Permits issued under this section may include any standard conditions provided by department rule which are appropriate and consistent with this section.

(h) Discharges shall be allowed, provided the STAs are operated in accordance with this section, if, after a stabilization period:

1. The STAs achieve the design objectives of the Everglades Construction Project for phosphorus;

2. For water quality parameters other than phosphorus, the quality of water discharged from the STAs is of equal or better quality than inflows; and

3. Discharges from STAs do not pose a serious danger to the public health, safety, or welfare.

(i) The district may discharge from any STA into waters of the state upon issuance of final agency action authorizing such action or in accordance with s. 373.439.

(j)1. Modifications to the Everglades Construction Project shall be submitted to the department for a determination as to whether permit modification is necessary. The department shall notify the district within 30 days after receiving the submittal as to whether permit modification is necessary.

2. The Legislature recognizes that technological advances may occur during the construction of the Everglades Construction Project. If superior technology becomes available in the future which can be implemented to more effectively meet the intent and purposes of this section, the district is authorized to pursue that alternative through permit modification to the department. The department may issue or modify a permit provided that the alternative is demonstrated to be superior at achieving the restoration goals of the Everglades Construction Project considering:

a. Levels of load reduction;

b. Levels of discharge concentration reduction;

c. Water quantity, distribution, and timing for the Everglades Protection Area;

d. Compliance with water quality standards;

e. Compatibility of treated water with the balance in natural populations of aquatic flora or fauna in the Everglades Protection Area;

f. Cost-effectiveness; and

g. The schedule for implementation.

Upon issuance of permit modifications by the department, the district is authorized to use available funds to finance the modification.

3. The district shall modify projects of the Everglades Construction Project, as appropriate, if the projects are not achieving the design objectives. Modifications that are inconsistent with the permit shall require a permit modification from the department. Modifications which substitute the treatment technology must meet the requirements of subparagraph 2. Nothing in this section shall prohibit the district from refining or modifying the final design of the project based upon the February 14, 1994, conceptual design document in accordance with standard engineering practices.

(k) By October 1, 1994, the district shall apply for a permit under this section to operate and maintain discharge structures within the control of the district which discharge into, within, or from the Everglades Protection Area and are not included in the Everglades Construction Project. The district may comply with this subsection by amending its pending permit application regarding these structures. In addition to the requirements of ss. 373.413 and 373.416, the application shall include the following:

1. Schedules and strategies for:

a. Achieving and maintaining water quality standards;

b. Evaluation of existing programs, permits, and water quality data;

c. Acquisition of lands and construction and operation of water treatment facilities, if appropriate, together with development of funding mechanisms; and

d. Development of a regulatory program to improve water quality, including identification of structures or systems requiring permits or modifications of existing permits.

2. A monitoring program to ensure the accuracy of data and measure progress toward achieving compliance with water quality standards.

(l) The department shall issue one or more permits for a term of 5 years for the operation and maintenance of structures identified by the district in paragraph (k) upon the district's demonstration of reasonable assurance that those elements identified in paragraph (k) will provide compliance with water quality standards to the maximum extent practicable and otherwise comply with the provisions of ss. 373.413 and 373.416. The department shall take agency action on the permit application by October 1, 1996. At least 60 days prior to the expiration of any permit, the district may apply for a renewal thereof for a period of 5 years.

(m) The district may apply for modification of any permit issued pursuant to this subsection, including superior technology in accordance with the procedures set forth in this subsection.

(n) The district also shall apply for a permit or modification of an existing permit, as provided in this subsection, for any new structure or for any modification of an existing structure.

(o) Except as otherwise provided in this section, nothing in this subsection shall relieve any person from the need to obtain any permit required by the department or the district pursuant to any other provision of law.

(p) The district shall publish notice of rulemaking pursuant to chapter 120 by October 1, 1991, allowing for a master permit or permits authorizing discharges from landowners within that area served by structures identified as S-5A, S-6, S-7, S-8, and S-150. For discharges within this area, the district shall not initiate any proceedings to require new permits or permit modifications for nutrient limitations prior to the adoption of the master permit rule by the governing board of the district or prior to April 1, 1992, whichever first occurs. The district's rules shall also establish conditions or requirements allowing for a single master permit for the Everglades Agricultural Area including those structures and water releases subject to chapter 40E-61, Florida Administrative Code. No later than the adoption of rules allowing for a single master permit, the department and the district shall provide appropriate procedures for incorporating into a master permit separate permits issued by the department under this chapter. The district's rules authorizing master permits for the Everglades Agricultural Area shall provide requirements consistent with this section and with interim or other permits issued by the department to the district. Such a master permit shall not preclude the requirement that individual permits be obtained for persons within the master permit area for activities not authorized by, or not in compliance with, the master permit. Nothing in this subsection shall limit the authority of the department or district to enforce existing permit requirements or existing rules, to require permits for new structures, or to develop rules for master permits for other areas. To the greatest extent possible the department shall delegate to the district any authority necessary to implement this subsection which is not already delegated.

(10) LONG-TERM COMPLIANCE PERMITS.—By December 31, 2006, the department and the district shall take such action as may be necessary to implement the pre-2006 projects and strategies of the Long-Term Plan so that water delivered to the Everglades Protection Area achieves in all parts of the Everglades Protection Area state water quality standards, including the phosphorus criterion and moderating provisions.

(a) By December 31, 2003, the district shall submit to the department an application for permit modification to incorporate proposed changes to the Everglades Construction Project and other district works delivering water to the Everglades Protection Area as needed to implement the pre-2006 projects and strategies of the Long-Term Plan in all permits issued by the department, including the permits issued pursuant to subsection (9). These changes shall be designed to achieve state water quality standards, including the phosphorus criterion and moderating provisions. During the implementation of the initial phase of the Long-Term Plan, permits issued by the department shall be based on BAPRT, and shall include technology-based effluent limitations consistent with the Long-Term Plan, as provided in subparagraph (4)(e)3.

(b) If the Everglades Construction Project or other discharges to the Everglades Protection Area are in compliance with state water quality standards, including the phosphorus criterion, the permit application shall include:

1. A plan for maintaining compliance with the phosphorus criterion in the Everglades Protection Area.

2. A plan for maintaining compliance in the Everglades Protection Area with state water quality standards other than the phosphorus criterion.

(11) APPLICABILITY OF LAWS AND WATER QUALITY STANDARDS; AUTHORITY OF DISTRICT AND DEPARTMENT.—

(a) Except as otherwise provided in this section, nothing in this section shall be construed:

1. As altering any applicable state water quality standards, laws, or district or department rules in areas impacted by this section; or

2. To restrict the authority otherwise granted the department and the district pursuant to this chapter or chapter 403, and provisions of this section shall be deemed supplemental to the authority granted pursuant to this chapter and chapter 403.

(b) Mixing zones, variances, and moderating provisions, or relief mechanisms for compliance with water quality standards as provided by department rules, shall not be permitted for discharges which are subject to paragraph (4)(f) and subject to this section, except that site specific alternative criteria may be allowed for nonphosphorus parameters if the applicant shows entitlement under applicable law. After December 31, 2006, all such relief mechanisms may be allowed for nonphosphorus parameters if otherwise provided for by applicable law.

(c) Those landowners or permittees who are not in compliance as provided in paragraph (4)(f) must meet a discharge limit for phosphorus of 50 parts per billion (ppb) unless and until some other limit has been established by department rule or order or operation of paragraph (4)(e).

(12) RIGHTS OF SEMINOLE TRIBE OF FLORIDA.—Nothing in this section is intended to diminish or alter the governmental authority and powers of the Seminole Tribe of Florida, or diminish or alter the rights of that tribe, including, but not limited to, rights under the Water Rights Compact among the Seminole Tribe of Florida, the state, and the South Florida Water Management District as enacted by Pub. L. No. 100-228, 101 Stat. 1556, and chapter 87-292, Laws of Florida, and codified in s. 285.165, and rights under any other agreement between the Seminole Tribe of Florida and the state or its agencies. No land of the Seminole Tribe of Florida shall be used for stormwater treatment without the consent of the tribe.

(13) ANNUAL REPORTS.—Beginning March 1, 2006, as part of the consolidated annual report required by s. 373.036(7), the district shall report on implementation of the section. The annual report will include a summary of the water conditions in the Everglades Protection Area, the status of the impacted areas, the status of the construction of the STAs, the implementation of the BMPs, and actions taken to monitor and control exotic species. The district must prepare the report in coordination with federal and state agencies.

(14) EVERGLADES FUND.—The South Florida Water Management District is directed to separately account for all moneys used for the purpose of funding the Everglades Construction Project as part of the consolidated annual report required by s. 373.036(7).

(15) DEFINITION OF EVERGLADES AGRICULTURAL AREA.—As used in this section, "Everglades Agricultural Area" or "EAA" means the following described property: BEGINNING at the intersection of the North line of Section 2, Township 41, Range 37 East, with the Easterly right-of-way line of U.S. Army Corps of Engineers' Levee D-9, in Palm Beach County, Florida; thence, easterly along said North line of said Section 2 to the Northeast corner of said Section 2; thence, northerly along the West line of Section 36, Township 40 South, Range 37 East, to the West one-quarter corner of said Section 36; thence, easterly along the East-West half section line of said Section 36 to the center of said Section 36; thence northerly along the North-South half section line of said Section 36 to the North one-quarter corner of said Section 36, said point being on the line between Palm Beach and Martin Counties; thence, easterly along said North line of said Section 36 and said line between Palm Beach and Martin Counties to the Westerly right-of-way line of the South Florida Water Management District's Levee 8 North Tieback; thence, southerly along said Westerly right-of-way line of said Levee 8 North Tieback to the Southerly right-of-way line of South Florida Water Management District's Levee 8 at a point near the Northeast corner of Section 12, Township 41 South, Range 37 East; thence, easterly along said Southerly right-of-way line of said Levee 8 to a point in Section 7, Township 41 South, Range 38 East, where said right-of-way line turns southeasterly; thence, southeasterly along the Southwesterly right-of-way line of said Levee 8 to a point near the South line of Section 8, Township 43 South, Range 40 East, where said right-of-way line turns southerly; thence, southerly along the Westerly right-of-way line of said Levee 8 to the Northerly right-of-way line of State Road 80, in Section 32, Township 43 South, Range 40 East; thence, westerly along the Northerly right-of-way line of said State Road 80 to the northeasterly extension of the Northwesterly right-of-way line of South Florida Water Management District's Levee 7; thence, southwesterly along said northeasterly extension, and along the northwesterly right-of-way line of said Levee 7 to a point near the Northwest corner of Section 3, Township 45 South, Range 39 East, where said right-of-way turns southerly; thence, southerly along the Westerly right-of-way line of said Levee 7 to the Northwesterly right-of-way line of South Florida Water Management District's Levee 6, on the East line of Section 4, Township 46 South, Range 39 East; thence, southwesterly along the Northwesterly right-of-way line of said Levee 6 to the Northerly right-of-way line of South Florida Water Management District's Levee 5, near the Southwest corner of Section 22, Township 47 South, Range 38 East; thence, westerly along said Northerly right-of-way lines of said Levee 5 and along the Northerly right-of-way line of South Florida Water Management District's Levee 4 to the Northeasterly right-of-way line of South Florida Water Management District's Levee 3 and the Northeast corner of Section 12, Township 48 South, Range 34 East; thence, northwesterly along said Northeasterly right-of-way line of said Levee 3 to a point near the Southwest corner of Section 9, Township 47 South, Range 34 East, where said right-of-way line turns northerly; thence, northerly along the Easterly right-of-way lines of said Levee 3 and South Florida Water Management District's Levee 2 to the southerly line of Section 4, Township 46 South, Range 34 East; thence, easterly along said southerly line of said Section 4 to the Southeast corner of said Section 4; thence, northerly along the East lines of said Section 4 and Section 33, Township 45 South, Range 34 East, to the Northeast corner of said Section 33; thence, westerly along the North line of said Section 33 to said Easterly right-of-way line of said Levee 2; thence, northerly along said Easterly right-of-way lines of said Levee 2 and South Florida Water Management District's Levee 1, to the North line of Section 16, Township 44 South, Range 34 East; thence, easterly along the North lines of said Section 16 and Section 15, Township 44 South, Range 34 East, to the Northeast corner of said Section 15; thence, northerly along the West lines of Section 11 and Section 2, Township 44 South, Range 34 East, and the West lines of Section 35, Section 26 and Section 23, Township 43 South, Range 34 East to a point 25 feet north of the West quarter-corner (W$^1/_4$) of said Section 23; thence, easterly along a line that is 25 feet north and parallel to the East-West half section line of said Section 23 and Section 24 to a point that is 25 feet north of the center of said Section 24; thence, northerly along the North-South half section lines of said Section 24 and Section 13, Township 43 South, Range 34 East, to the intersection with the North right-of-way line of State Road 80A (old U.S. Highway 27); thence, westerly along said North right-of-way line of said State Road 80A (old U.S. Highway 27) to the intersection with the Southerly right-of-way line of State Road 80; thence, easterly along said Southerly right-of-way line of said State Road 80 to the intersection with the North line of Section 19, Township 43 South, Range 35 East; thence, easterly along said North line of said Section 19 to the intersection with Southerly right-of-way of U.S. Army Corps of Engineers Levee D-2; thence, easterly along said Southerly right-of-way of said Levee D-2 to the intersection with the north right-of-way line of State Road 80 (new U.S. Highway 27); thence, easterly along said North right-of-way line of said State Road 80 (new

U.S. Highway 27) to the East right-of-way line of South Florida Water Management District's Levee 25 (Miami Canal); thence, North along said East right-of-way line of said Levee 25 to the said south right-of-way line of said Levee D-2; thence, easterly and northeasterly along said Southerly and Easterly right-of-way lines of said Levee D-2 and said Levee D-9 to the point of beginning.

(16) DEFINITION OF C-139 BASIN.—For purposes of this section:

(a) "C-139 Basin" or "Basin" means the following described property: beginning at the intersection of an easterly extension of the south bank of Deer Fence Canal with the center line of South Florida Water Management District's Levee 3 in Section 33, Township 46 South, Range 34 East, Hendry County, Florida; thence, westerly along said easterly extension and along the South bank of said Deer Fence Canal to where it intersects the center line of State Road 846 in Section 33, Township 46 South, Range 32 East; thence, departing from said top of bank to the center line of said State Road 846, westerly along said center line of said State Road 846 to the West line of Section 4, Township 47 South, Range 31 East; thence, northerly along the West line of said section 4, and along the west lines of Sections 33 and 28, Township 46 South, Range 31 East, to the northwest corner of said Section 28; thence, easterly along the North line of said Section 28 to the North one-quarter (N1/4) corner of said Section 28; thence, northerly along the West line of the Southeast one-quarter (SE1/4) of Section 21, Township 46 South, Range 31 East, to the northwest corner of said Southeast one-quarter (SE1/4) of Section 21; thence, easterly along the North line of said Southeast one-quarter (SE1/4) of Section 21 to the northeast corner of said Southeast one-quarter (SE1/4) of Section 21; thence, northerly along the East line of said Section 21 and the East line of Section 16, Township 46 South, Range 31, East, to the northeast corner thereof; thence, westerly along the North line of said Section 16, to the northwest corner thereof; thence, northerly along the West line of Sections 9 and 4, Township 46 South, Range 31, East, to the northwest corner of said Section 4; thence, westerly along the North lines of Section 5 and Section 6, Township 46 South, Range 31 East, to the South one-quarter (S1/4) corner of Section 31, Township 45 South, Range 31 East; thence, northerly to the South one-quarter (S1/4) corner of Section 30, Township 45 South, Range 31 East; thence, easterly along the South line of said Section 30 and the South lines of Sections 29 and 28, Township 45 South, Range 31 East, to the Southeast corner of said Section 28; thence, northerly along the East line of said Section 28 and the East lines of Sections 21 and 16, Township 45 South, Range 31 East, to the Northwest corner of the Southwest one-quarter of the Southwest one-quarter (SW1/4 of the SW1/4) of Section 15, Township 45 South, Range 31 East; thence, northeasterly to the east one-quarter (E1/4) corner of Section 15, Township 45 South, Range 31 East; thence, northerly along the East line of said Section 15, and the East line of Section 10, Township 45 South, Range 31 East, to the center line of a road in the Northeast one-quarter (NE1/4) of said Section 10; thence, generally easterly and northeasterly along the center line of said road to its intersection with the center line of State Road 832; thence, easterly along said center line of said State Road 832 to its intersection with the center line of State Road 833; thence, northerly along said center line of said State Road 833 to the north line of Section 9, Township 44 South, Range 32 East; thence, easterly along the North line of said Section 9 and the north lines of Sections 10, 11 and 12, Township 44 South, Range 32 East, to the northeast corner of Section 12, Township 44 South, Range 32 East; thence, easterly along the North line of Section 7, Township 44 South, Range 33 East, to the center line of Flaghole Drainage District Levee, as it runs to the east near the northwest corner of said Section 7, Township 44 South, Range 33 East; thence, easterly along said center line of the Flaghole Drainage District Levee to where it meets the center line of South Florida Water Management District's Levee 1 at Flag Hole Road; thence, continue easterly along said center line of said Levee 1 to where it turns south near the Northwest corner of Section 12, Township 44 South, Range 33 East; thence, Southerly along said center line of said Levee 1 to where the levee turns east near the Southwest corner of said Section 12; thence, easterly along said center line of said Levee 1 to where it turns south near the Northeast corner of Section 17, Township 44 South, Range 34 East; thence, southerly along said center line of said Levee 1 and the center line of South Florida Water Management District's Levee 2 to the intersection with the north line of Section 33, Township 45 South, Range 34 East; thence, easterly along the north line of said Section 33 to the northeast corner of said Section 33; thence, southerly along the east line of said Section 33 to the southeast corner of said Section 33; thence, southerly along the east line of Section 4, Township 46 South, Range 34 East to the southeast corner of said Section 4; thence, westerly along the south line of said Section 4 to the intersection with the centerline of South Florida Water Management District's Levee 2; thence, southerly along said Levee 2 centerline and South Florida Water Management District's Levee 3 centerline to the POINT OF BEGINNING.

(b) Sections 21, 28, and 33, Township 46 South, Range 31 East, are not included within the boundary of the C-139 Basin.

(c) If the district issues permits in accordance with all applicable rules allowing water from the "C-139 Annex" to flow into the drainage system for the C-139 Basin, the C-139 Annex shall be added to the C-139 Basin for all tax years thereafter, commencing with the next C-139 agricultural privilege tax roll certified after issuance of such permits. "C-139 Annex" means the following described property: that part of the S.E. ¼ of Section 32, Township 46 South, Range 34 East and that portion of Sections 5 and 6, Township 47 South, Range 34 East lying west of the L-3 Canal and South of the Deer Fence Canal; all of Sections 7, 17, 18, 19, 20, 28, 29, 30, 31, 32, 33, and 34, and that portion of Sections 8, 9, 16, 21, 22, 26, 27, 35, and 36 lying south and west of the L-3 Canal, in Township 47 South, Range 34 East; and all of Sections 2, 3, 4, 5, 6, 8, 9, 10, and 11 and that portion of Section 1 lying south and west of the L-3 Canal all in Township 48 South, Range 34 East.

(17) SHORT TITLE.—This section shall be known as the "Everglades Forever Act."

History.—s. 2, ch. 91-80; ss. 1, 2, ch. 94-115; s. 273, ch. 94-356; s. 171, ch. 99-13; s. 1, ch. 2003-12; s. 18, ch. 2003-394; s. 42, ch. 2005-2; s. 12, ch. 2005-36; s. 86, ch. 2008-4; s. 1, ch. 2013-59; s. 76, ch. 2014-17; s. 41, ch. 2015-229; s. 18, ch. 2017-3; s. 75, ch. 2020-2.

373.45922 South Florida Water Management District; permit for completion of Everglades Construction Project; report.—Within 60 days after receipt of any permit issued pursuant to s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, for the completion of the Everglades Construction Project, as defined by s. 373.4592(2)(g), the South Florida Water Management District shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that details the differences between the permit and the Everglades Program as defined by s. 373.4592(2)(h) and identifies any changes to the schedule or funding for the Everglades Program that result from the permit. The South Florida Water Management District shall include in the report a complete chronological record of any negotiations related to conditions included in the permit. Such record shall be documented by inclusion of all relevant correspondence in the report. If any condition of the permit affects the schedule or costs of the Everglades Construction Project, the South Florida Water Management District shall include in the report a detailed explanation of why the condition was imposed and a detailed analysis of whether the condition would promote or hinder the progress of the project.

History.—s. 3, ch. 97-258; s. 37, ch. 2004-5.

373.45924 South Florida Water Management District; Everglades truth in borrowing.—

(1) Definitions.—As used in this section, unless the context otherwise indicates:

(a) "Debt" means any evidence of indebtedness, including, but not limited to, an agreement to pay principal and any interest thereon, whether in the form of a contract to repay borrowed money or otherwise, and includes moneys borrowed from any source that are directed to a purpose for which they were not originally budgeted.

(b) "District" means the South Florida Water Management District.

(c) "Interest" means the compensation for the use or detention of money or its equivalent.

(d) "Interest rate" means the annual percentage of the outstanding debt or obligation payable as interest.

(e) "Obligation" means an agreement to pay principal and interest thereon, other than a debt, whether in the form of a lease, lease-purchase, installment purchase, or otherwise, and includes a share, participation, or other interest in any such agreement.

(f) "Outstanding debt" means any debt or obligation of which the principal has not been paid or for which an amount sufficient to provide for the payment of such debt or obligation and the interest on such debt or obligation to the maturity or early redemption of such debt or obligation has not been set aside for the benefit of the holders of such debt or obligation.

(g) "Principal" means the face value of the debt or obligation proposed to be issued or incurred.

(2) Whenever the South Florida Water Management District proposes to borrow or to otherwise finance with debt any fixed capital outlay projects or operating capital outlay for purposes pursuant to s. 373.4592, it shall develop the following documents to explain the issuance of a debt or obligation:

(a) A summary of outstanding debt, including borrowing.

(b) A statement of proposed financing, which shall include the following items:

1. A listing of the purpose of the debt or obligation.
2. The source of repayment of the debt or obligation.
3. The principal amount of the debt or obligation.
4. The interest rate on the debt or obligation.
5. A schedule of annual debt service payments for each proposed debt or obligation.

(c) A truth-in-borrowing statement, developed from the information compiled pursuant to this section, in substantially the following form:

The South Florida Water Management District is proposing to incur $_(insert principal)_ of debt or obligation through borrowing for the purpose of _(insert purpose)_. This debt or obligation is expected to be repaid over a period of _(insert term of issue from subparagraph (b)5.)_ years from the following sources: _(list sources)_. At a forecasted interest rate of _(insert rate of interest from subparagraph (b)4.)_, total interest paid over the life of the debt or obligation will be $_(insert sum of interest payments)_.

The truth-in-borrowing statement shall be published as a notice in one or more newspapers having a combined general circulation in the counties having land in the district. Such notice must be at least 6 inches square in size and shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear.

History.—s. 4, ch. 97-258.

373.45926 Everglades Trust Fund; allocation of revenues and expenditure of funds for conservation and protection of natural resources and abatement of water pollution.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds and declares the following:

(a) The Everglades ecological system is unique in the world and one of Florida's great treasures. The Legislature has responded to adverse changes in water quality, and in quantity, distribution, and timing of flows, that endanger the Everglades ecological system, by enacting the Everglades Forever Act. The act authorized the Everglades Construction Project, which is by far the largest environmental cleanup and restoration program of this type ever undertaken and will require substantial expenditures.

(b) In consideration of both the environmental benefits and public costs of the Everglades Construction Project, the Legislature finds that enhanced oversight and accountability is necessary to ensure that the Everglades Construction Project is completed in a timely manner and within the limits of the funds made available for its completion. The Legislature further finds that the implementation of the Everglades Forever Act is critical to the conservation and protection of natural resources and improvement of water quality in the Everglades Protection Area and the Everglades Agricultural Area.

(2) The South Florida Water Management District shall administer the Everglades Trust Fund consistent with the requirements of this section, as well as all other applicable laws.

(3) The South Florida Water Management District shall furnish, as part of the consolidated annual report required by s. 373.036(7), a detailed copy of its expenditures from the Everglades Trust Fund to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and shall make copies available to the public.

(4) The following funds shall be deposited into the Everglades Trust Fund specifically for the implementation of the Everglades Forever Act.

(a) Alligator Alley toll revenues pursuant to s. 338.26(3).

(b) Everglades agricultural privilege tax revenues pursuant to s. 373.4592(6).

(c) C-139 agricultural privilege tax revenues pursuant to s. 373.4592(7).

(d) Special assessment revenues pursuant to s. 373.4592(8).

(e) Ad valorem revenues pursuant to s. 373.4592(4)(a).

(f) Federal funds appropriated by the United States Congress for any component of the Everglades Construction Project.

(g) Any additional funds specifically appropriated by the Legislature for this purpose.

(h) Gifts designated for implementation of the Everglades Forever Act from individuals, corporations, and other entities.

(i) Any additional funds that become available for this purpose from any other source.

(5) Funds deposited into the Everglades Trust Fund pursuant to this section shall be expended for implementation of the Everglades Forever Act as provided by s. 373.4592.

(6) Funds from other sources deposited into the Everglades Trust Fund shall be used consistent with the purposes for which they were received.

(7) Annually, no later than January 1, the South Florida Water Management District shall report to the President of the Senate and the Speaker of the House of Representatives:

(a) The unencumbered balance which remains in the Everglades Trust Fund at the end of each fiscal year.

(b) The revenues deposited in the Everglades Trust Fund pursuant to this section, by source, and the record of expenditures from the Everglades Trust Fund.

History.—s. 5, ch. 97-258; s. 108, ch. 2001-266; s. 13, ch. 2005-36; s. 33, ch. 2011-34; s. 42, ch. 2015-229.

373.4593 Florida Bay Restoration.—

(1) The Legislature declares that an emergency exists regarding Florida Bay due to an environmental crisis manifested in widespread die off of sea grasses, algae blooms, and resulting decreases in marine life. These conditions threaten the ecological integrity of Florida Bay and surrounding areas and the economic viability of Monroe County and the State of Florida. The Legislature further finds that an increase in freshwater flow will assist in the restoration of Florida Bay.

(2) The South Florida Water Management District shall take all actions within its authority to implement an emergency interim plan. The emergency interim plan shall be designed to provide for the release of water into Taylor Slough and Florida Bay by up to 800 cfs, in order to optimize the quantity, timing, distribution, and quality of fresh water, and promote sheet flow into Taylor Slough.

(a) Within 60 days of the issuance of the final federal approvals, the South Florida Water Management District shall complete the installation of the necessary facilities required by the emergency interim plan.

(b) The South Florida Water Management District, upon approval of a majority of the Trustees of the Internal Improvement Trust Fund, shall file an eminent domain action to acquire the western three sections of the area known as Frog Pond. The Trustees of the Internal Improvement Trust Fund shall reach a decision on whether to approve the use of eminent domain for such purpose not later than January 1, 1995. The South Florida Water Management District, upon such approval, is granted the specific powers to exercise eminent domain to condemn the lands in these areas.

(c) Within 30 days of the acquisition of the property referred to above and the completion of the actions in paragraph (a) above, the South Florida Water Management District shall implement the emergency interim plan.

The above measures are emergency interim actions intended to enhance the quantity, timing, and distribution of freshwater to Taylor Slough and Florida Bay. These measures will benefit the water resources of the South Florida Water Management District and are consistent with the public interest.

(3) The district shall not be required to obtain a permit which may otherwise be required under this chapter or chapter 403 prior to the construction, installation, and operation of the pumping facilities and related facilities required to implement the emergency interim plan. The district is directed to provide information on the emergency interim plan to the department. The district shall minimize environmental impacts which may occur during construction, and shall submit a construction plan to the department. In the event that the emergency interim plan continues beyond July 1, 1996, the district shall apply to the department for a permit to continue to operate these facilities.

(4) The Legislature recognizes that the United States Army Corps of Engineers is developing a comprehensive plan for restoring freshwater flow into Taylor Slough and Florida Bay over the next several years. The emergency interim plan is not a substitute for or in conflict with the provisions of the United States Army Corps of Engineers currently under development. Further, the Legislature directs that the department and the South Florida Water Management District shall request the Federal Government complete and fund the ongoing restoration efforts so as to

increase the quantity, quality, timing, and distribution of water delivered to the Bay. The department and the district shall also request the Federal Government to evaluate the release of fresh water under the demonstration project, consistent with applicable law.

History.—s. 6, ch. 94-115; s. 9, ch. 2001-62.

373.45931 Alligator Alley tolls; Everglades and Florida Bay restoration.— The South Florida Water Management District is authorized to expend funds from Alligator Alley tolls which have been deposited in the Everglades Fund of the South Florida Water Management District to fund restoration activities for the Everglades and Florida Bay.

History.—s. 8, ch. 94-115.

373.4595 Northern Everglades and Estuaries Protection Program.—

(1) FINDINGS AND INTENT.—

(a) The Legislature finds that the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed are critical water resources of the state, providing many economic, natural habitat, and biodiversity functions benefiting the public interest, including agricultural, public, and environmental water supply; flood control; fishing; navigation and recreation; and habitat to endangered and threatened species and other flora and fauna.

(b) The Legislature finds that changes in land uses, the construction of the Central and Southern Florida Project, and the loss of surface water storage have resulted in adverse changes to the hydrology and water quality of Lake Okeechobee and the Caloosahatchee and St. Lucie Rivers and their estuaries.

(c) The Legislature finds that improvement to the hydrology, water quality, and associated aquatic habitats within the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed, is essential to the protection of the greater Everglades ecosystem.

(d) The Legislature also finds that it is imperative for the state, local governments, and agricultural and environmental communities to commit to restoring and protecting the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed, and that a watershed-based approach to address these issues must be developed and implemented immediately.

(e) The Legislature finds that phosphorus loads from the Lake Okeechobee watershed have contributed to excessive phosphorus levels throughout the Lake Okeechobee watershed and downstream receiving waters and that a reduction in levels of phosphorus will benefit the ecology of these systems. The excessive levels of phosphorus have also resulted in an accumulation of phosphorus in the sediments of Lake Okeechobee. If not removed, internal phosphorus loads from the sediments are expected to delay responses of the lake to external phosphorus reductions.

(f) The Legislature finds that the Lake Okeechobee phosphorus loads set forth in the total maximum daily loads established in accordance with s. 403.067 represent an appropriate basis for restoration of the Lake Okeechobee watershed.

(g) The Legislature finds that, in addition to phosphorus, other pollutants are contributing to water quality problems in the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed, and that the total maximum daily load requirements of s. 403.067 provide a means of identifying and addressing these problems.

(h) The Legislature finds that the expeditious implementation of the Lake Okeechobee Watershed Protection Program, the Caloosahatchee River Watershed Protection Program, and the St. Lucie River Watershed Protection Program is needed to improve the quality, quantity, timing, and distribution of water in the northern Everglades ecosystem and that this section, in conjunction with s. 403.067, including the implementation of the plans developed and approved pursuant to subsections (3) and (4), and any related basin management action plan developed and implemented pursuant to s. 403.067(7)(a), provide a reasonable means of achieving the total maximum daily load requirements and achieving and maintaining compliance with state water quality standards.

(i) The Legislature finds that the implementation of the programs contained in this section is for the benefit of the public health, safety, and welfare and is in the public interest.

(j) The Legislature finds that sufficient research has been conducted and sufficient plans developed to immediately expand and accelerate programs to address the hydrology and water quality in the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed.

(k) The Legislature finds that a continuing source of funding is needed to effectively implement the programs developed and approved under this section which are needed to address the hydrology and water quality problems within the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed.

(l) It is the intent of the Legislature to protect and restore surface water resources and achieve and maintain compliance with water quality standards in the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed, and downstream receiving waters, through the phased, comprehensive, and innovative protection program set forth in this section which includes long-term solutions based upon the total maximum daily loads established in accordance with s. 403.067. This program shall be watershed-based, shall provide for consideration of all water quality issues needed to meet the total maximum daily load, and shall include research and monitoring, development and implementation of best management practices, refinement of existing regulations, and structural and nonstructural projects, including public works.

(m) It is the intent of the Legislature that this section be implemented in coordination with the Comprehensive Everglades Restoration Plan project components and other federal programs in order to maximize opportunities for the most efficient and timely expenditures of public funds.

(n) It is the intent of the Legislature that the coordinating agencies encourage and support the development of creative public-private partnerships and programs, including opportunities for water storage and quality improvement on private lands and water quality credit trading, to facilitate or further the restoration of the surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed, consistent with s. 403.067.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Best management practice" means a practice or combination of practices determined by the coordinating agencies, based on research, field-testing, and expert review, to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality in agricultural and urban discharges. Best management practices for agricultural discharges shall reflect a balance between water quality improvements and agricultural productivity.

(b) "Biosolids" means the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility, formerly known as "domestic wastewater residuals" or "residuals," and includes products and treated material from biosolids treatment facilities and septage management facilities regulated by the department. The term does not include the treated effluent or reclaimed water from a domestic wastewater treatment facility, solids removed from pump stations and lift stations, screenings and grit removed from the preliminary treatment components of domestic wastewater treatment facilities, or ash generated during the incineration of biosolids.

(c) "Caloosahatchee River watershed" means the Caloosahatchee River, its tributaries, its estuary, and the area within Charlotte, Glades, Hendry, and Lee Counties from which surface water flow is directed or drains, naturally or by constructed works, to the river, its tributaries, or its estuary.

(d) "Coordinating agencies" means the Department of Agriculture and Consumer Services, the Department of Environmental Protection, and the South Florida Water Management District.

(e) "Corps of Engineers" means the United States Army Corps of Engineers.

(f) "Department" means the Department of Environmental Protection.

(g) "District" means the South Florida Water Management District.

(h) "Lake Okeechobee Watershed Construction Project" means the construction project developed pursuant to this section.

(i) "Lake Okeechobee Watershed Protection Plan" means the Lake Okeechobee Watershed Construction Project and the Lake Okeechobee Watershed Research and Water Quality Monitoring Program.

(j) "Lake Okeechobee watershed" means Lake Okeechobee, its tributaries, and the area within which surface water flow is directed or drains, naturally or by constructed works, to the lake or its tributaries.

(k) "Northern Everglades" means the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed.

(l) "Project component" means any structural or operational change, resulting from the Restudy, to the Central and Southern Florida Project as it existed and was operated as of January 1, 1999.

(m) "Restudy" means the Comprehensive Review Study of the Central and Southern Florida Project, for which federal participation was authorized by the Federal Water Resources Development Acts of 1992 and 1996 together with related Congressional resolutions and for which participation by the South Florida Water Management District is authorized by s. 373.1501. The term includes all actions undertaken pursuant to the aforementioned authorizations which will result in recommendations for modifications or additions to the Central and Southern Florida Project.

(n) "River Watershed Protection Plans" means the Caloosahatchee River Watershed Protection Plan and the St. Lucie River Watershed Protection Plan developed pursuant to this section.

(o) "Soil amendment" means any substance or mixture of substances sold or offered for sale for soil enriching or corrective purposes, intended or claimed to be effective in promoting or stimulating plant growth, increasing soil or plant productivity, improving the quality of crops, or producing any chemical or physical change in the soil, except amendments, conditioners, additives, and related products that are derived solely from inorganic sources and that contain no recognized plant nutrients.

(p) "St. Lucie River watershed" means the St. Lucie River, its tributaries, its estuary, and the area within Martin, Okeechobee, and St. Lucie Counties from which surface water flow is directed or drains, naturally or by constructed works, to the river, its tributaries, or its estuary.

(q) "Total maximum daily load" means the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background adopted pursuant to s. 403.067. Before determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can assimilate from all sources without exceeding water quality standards must first be calculated.

(3) LAKE OKEECHOBEE WATERSHED PROTECTION PROGRAM.—The Lake Okeechobee Watershed Protection Program shall consist of the Lake Okeechobee Watershed Protection Plan, the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067, the Lake Okeechobee Exotic Species Control Program, and the Lake Okeechobee Internal Phosphorus Management Program. The Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 shall be the component of the Lake Okeechobee Watershed Protection Program that achieves phosphorus load reductions for Lake Okeechobee. The Lake Okeechobee Watershed Protection Program shall address the reduction of phosphorus loading to the lake from both internal and external sources. Phosphorus load reductions shall be achieved through a phased program of implementation. In the development and administration of the Lake Okeechobee Watershed Protection Program, the coordinating agencies shall maximize opportunities provided by federal cost-sharing programs and opportunities for partnerships with the private sector.

(a) *Lake Okeechobee Watershed Protection Plan.*—To protect and restore surface water resources, the district, in cooperation with the other coordinating agencies, shall complete a Lake Okeechobee Watershed Protection Plan in accordance with this section and ss. 373.451-373.459. Beginning March 1, 2020, and every 5 years thereafter, the district shall update the Lake Okeechobee Watershed Protection Plan to ensure that it is consistent with the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067. The Lake Okeechobee Watershed Protection Plan shall identify the geographic extent of the watershed, be coordinated with the plans developed pursuant to paragraphs (4)(a) and (c), and include the Lake Okeechobee Watershed Construction Project and the Lake Okeechobee Watershed Research and Water Quality Monitoring Program. The plan shall consider and build upon a review and analysis of the performance of projects constructed during Phase I and Phase II of the Lake Okeechobee Watershed Construction Project, pursuant to subparagraph 1.; relevant information resulting from the Lake Okeechobee Basin Management Action Plan, pursuant to paragraph (b); relevant information resulting from the Lake Okeechobee Watershed Research and Water Quality Monitoring Program, pursuant to subparagraph 2.; relevant information resulting from the Lake Okeechobee Exotic Species Control Program, pursuant to paragraph (c); and relevant information resulting from the Lake Okeechobee Internal Phosphorus Management Program, pursuant to paragraph (d).

1. Lake Okeechobee Watershed Construction Project.—To improve the hydrology and water quality of Lake Okeechobee and downstream receiving waters, including the Caloosahatchee and St. Lucie Rivers and their estuaries,

the district, in cooperation with the other coordinating agencies, shall design and construct the Lake Okeechobee Watershed Construction Project. The project shall include:

a. Phase I.—Phase I of the Lake Okeechobee Watershed Construction Project shall consist of a series of project features consistent with the recommendations of the South Florida Ecosystem Restoration Working Group's Lake Okeechobee Action Plan. Priority basins for such projects include S-191, S-154, and Pools D and E in the Lower Kissimmee River. To obtain phosphorus load reductions to Lake Okeechobee as soon as possible, the following actions shall be implemented:

(I) The district shall serve as a full partner with the Corps of Engineers in the design and construction of the Grassy Island Ranch and New Palm Dairy stormwater treatment facilities as components of the Lake Okeechobee Water Retention/Phosphorus Removal Critical Project. The Corps of Engineers shall have the lead in design and construction of these facilities. Should delays be encountered in the implementation of either of these facilities, the district shall notify the department and recommend corrective actions.

(II) The district shall obtain permits and complete construction of two of the isolated wetland restoration projects that are part of the Lake Okeechobee Water Retention/Phosphorus Removal Critical Project. The additional isolated wetland projects included in this critical project shall further reduce phosphorus loading to Lake Okeechobee.

(III) The district shall work with the Corps of Engineers to expedite initiation of the design process for the Taylor Creek/Nubbins Slough Reservoir Assisted Stormwater Treatment Area, a project component of the Comprehensive Everglades Restoration Plan. The district shall propose to the Corps of Engineers that the district take the lead in the design and construction of the Reservoir Assisted Stormwater Treatment Area and receive credit towards the local share of the total cost of the Comprehensive Everglades Restoration Plan.

b. Phase II technical plan and construction.—The district, in cooperation with the other coordinating agencies, shall develop a detailed technical plan for Phase II of the Lake Okeechobee Watershed Construction Project which provides the basis for the Lake Okeechobee Basin Management Action Plan adopted by the department pursuant to s. 403.067. The detailed technical plan shall include measures for the improvement of the quality, quantity, timing, and distribution of water in the northern Everglades ecosystem, including the Lake Okeechobee watershed and the estuaries, and for facilitating the achievement of water quality standards. Use of cost-effective biologically based, hybrid wetland/chemical and other innovative nutrient control technologies shall be incorporated in the plan where appropriate. The detailed technical plan shall also include a Process Development and Engineering component to finalize the detail and design of Phase II projects and identify additional measures needed to increase the certainty that the overall objectives for improving water quality and quantity can be met. Based on information and recommendations from the Process Development and Engineering component, the Phase II detailed technical plan shall be periodically updated. Phase II shall include construction of additional facilities in the priority basins identified in sub-subparagraph a., as well as facilities for other basins in the Lake Okeechobee watershed. The technical plan shall:

(I) Identify Lake Okeechobee Watershed Construction Project facilities designed to contribute to achieving all applicable total maximum daily loads established pursuant to s. 403.067 within the Lake Okeechobee watershed.

(II) Identify the size and location of all such Lake Okeechobee Watershed Construction Project facilities.

(III) Provide a construction schedule for all such Lake Okeechobee Watershed Construction Project facilities, including the sequencing and specific timeframe for construction of each Lake Okeechobee Watershed Construction Project facility.

(IV) Provide a schedule for the acquisition of lands or sufficient interests necessary to achieve the construction schedule.

(V) Provide a detailed schedule of costs associated with the construction schedule.

(VI) Identify, to the maximum extent practicable, impacts on wetlands and state-listed species expected to be associated with construction of such facilities, including potential alternatives to minimize and mitigate such impacts, as appropriate.

(VII) Provide for additional measures, including voluntary water storage and quality improvements on private land, to increase water storage and reduce excess water levels in Lake Okeechobee and to reduce excess discharges to the estuaries.

(VIII) Develop the appropriate water quantity storage goal to achieve the desired Lake Okeechobee range of lake levels and inflow volumes to the Caloosahatchee and St. Lucie estuaries while meeting the other water-related needs of the region, including water supply and flood protection.

(IX) Provide for additional source controls needed to enhance performance of the Lake Okeechobee Watershed Construction Project facilities. Such additional source controls shall be incorporated into the Lake Okeechobee Basin Management Action Plan pursuant to paragraph (b).

c. Evaluation.—Within 5 years after the adoption of the Lake Okeechobee Basin Management Action Plan pursuant to s. 403.067 and every 5 years thereafter, the department, in cooperation with the other coordinating agencies, shall conduct an evaluation of the Lake Okeechobee Watershed Construction Project and identify any further load reductions necessary to achieve compliance with the Lake Okeechobee total maximum daily loads established pursuant to s. 403.067. The district shall identify modifications to facilities of the Lake Okeechobee Watershed Construction Project as appropriate to meet the total maximum daily loads. Modifications to the Lake Okeechobee Watershed Construction Project resulting from this evaluation shall be incorporated into the Lake Okeechobee Basin Management Action Plan and included in the applicable annual progress report submitted pursuant to subsection (6).

d. Coordination and review.—To ensure the timely implementation of the Lake Okeechobee Watershed Construction Project, the design of project facilities shall be coordinated with the department and other interested parties, including affected local governments, to the maximum extent practicable. Lake Okeechobee Watershed Construction Project facilities shall be reviewed and commented upon by the department before the execution of a construction contract by the district for that facility.

2. Lake Okeechobee Watershed Research and Water Quality Monitoring Program.—The coordinating agencies shall implement a Lake Okeechobee Watershed Research and Water Quality Monitoring Program. Results from the program shall be used by the department, in cooperation with the other coordinating agencies, to make modifications to the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067, as appropriate. The program shall:

a. Evaluate all available existing water quality data concerning total phosphorus in the Lake Okeechobee watershed, develop a water quality baseline to represent existing conditions for total phosphorus, monitor long-term ecological changes, including water quality for total phosphorus, and measure compliance with water quality standards for total phosphorus, including any applicable total maximum daily load for the Lake Okeechobee watershed as established pursuant to s. 403.067. Beginning March 1, 2020, and every 5 years thereafter, the department shall reevaluate water quality and quantity data to ensure that the appropriate projects are being designated and incorporated into the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067. The district shall implement a total phosphorus monitoring program at appropriate structures owned or operated by the district and within the Lake Okeechobee watershed.

b. Develop a Lake Okeechobee water quality model that reasonably represents the phosphorus dynamics of Lake Okeechobee and incorporates an uncertainty analysis associated with model predictions.

c. Determine the relative contribution of phosphorus from all identifiable sources and all primary and secondary land uses.

d. Conduct an assessment of the sources of phosphorus from the Upper Kissimmee Chain of Lakes and Lake Istokpoga and their relative contribution to the water quality of Lake Okeechobee. The results of this assessment shall be used by the coordinating agencies as part of the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 to develop interim measures, best management practices, or regulations, as applicable.

e. Assess current water management practices within the Lake Okeechobee watershed and develop recommendations for structural and operational improvements. Such recommendations shall balance water supply, flood control, estuarine salinity, maintenance of a healthy lake littoral zone, and water quality considerations.

f. Evaluate the feasibility of alternative nutrient reduction technologies, including sediment traps, canal and ditch maintenance, fish production or other aquaculture, bioenergy conversion processes, and algal or other biological treatment technologies and include any alternative nutrient reduction technologies determined to be feasible in the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067.

g. Conduct an assessment of the water volumes and timing from the Lake Okeechobee watershed and their relative contribution to the water level changes in Lake Okeechobee and to the timing and volume of water delivered to the estuaries.

(b) *Lake Okeechobee Basin Management Action Plan.*—The Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 shall be the watershed phosphorus control component for Lake Okeechobee. The Lake Okeechobee Basin Management Action Plan shall be a multifaceted approach designed to achieve the total maximum daily load by improving the management of phosphorus sources within the Lake Okeechobee watershed through implementation of regulations and best management practices, continued development and continued implementation of improved best management practices, improvement and restoration of the hydrologic function of natural and managed systems, and use of alternative technologies for nutrient reduction. As provided in s. 403.067(7)(a)6., the Lake Okeechobee Basin Management Action Plan must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years and shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Revisions to the plan shall be made, as appropriate, as a result of each 5-year review. Revisions to the basin management action plan shall be made by the department in cooperation with the basin stakeholders. Revisions to best management practices or other measures must follow the procedures set forth in s. 403.067(7)(c)4. Revised basin management action plans must be adopted pursuant to s. 403.067(7)(a)5. The department shall develop an implementation schedule establishing 5-year, 10-year, and 15-year measurable milestones and targets to achieve the total maximum daily load no more than 20 years after adoption of the plan. The initial implementation schedule shall be used to provide guidance for planning and funding purposes and is exempt from chapter 120. Upon the first 5-year review, the implementation schedule shall be adopted as part of the plan. If achieving the total maximum daily load within 20 years is not practicable, the implementation schedule must contain an explanation of the constraints that prevent achievement of the total maximum daily load within 20 years, an estimate of the time needed to achieve the total maximum daily load, and additional 5-year measurable milestones, as necessary. The coordinating agencies shall develop an interagency agreement pursuant to ss. 373.046 and 373.406(5) which is consistent with the department taking the lead on water quality protection measures through the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067; the district taking the lead on hydrologic improvements pursuant to paragraph (a); and the Department of Agriculture and Consumer Services taking the lead on agricultural interim measures, best management practices, and other measures adopted pursuant to s. 403.067. The interagency agreement must specify how best management practices for nonagricultural nonpoint sources are developed and how all best management practices are implemented and verified consistent with s. 403.067 and this section and must address measures to be taken by the coordinating agencies during any best management practice reevaluation performed pursuant to subparagraphs 5. and 10. The department shall use best professional judgment in making the initial determination of best management practice effectiveness. The coordinating agencies may develop an intergovernmental agreement with local governments to implement nonagricultural nonpoint source best management practices within their respective geographic boundaries. The coordinating agencies shall facilitate the application of federal programs that offer opportunities for water quality treatment, including preservation, restoration, or creation of wetlands on agricultural lands.

1. Agricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Watershed Protection Program as part of a phased approach of management strategies within the Lake Okeechobee Basin Management Action Plan, shall be implemented on an expedited basis.

2. As provided in s. 403.067, the Department of Agriculture and Consumer Services, in consultation with the department, the district, and affected parties, shall initiate rule development for interim measures, best management practices, conservation plans, nutrient management plans, or other measures necessary for Lake Okeechobee watershed total maximum daily load reduction. The rule shall include thresholds for requiring conservation and nutrient management plans and criteria for the contents of such plans. Development of agricultural nonpoint source best management practices shall initially focus on those priority basins listed in sub-subparagraph (a)1.a. The

Department of Agriculture and Consumer Services, in consultation with the department, the district, and affected parties, shall conduct an ongoing program for improvement of existing and development of new agricultural nonpoint source interim measures and best management practices. The Department of Agriculture and Consumer Services shall adopt such practices by rule. The Department of Agriculture and Consumer Services shall work with the University of Florida Institute of Food and Agriculture Sciences to review and, where appropriate, develop revised nutrient application rates for all agricultural soil amendments in the watershed.

3. As provided in s. 403.067, where agricultural nonpoint source best management practices or interim measures have been adopted by rule of the Department of Agriculture and Consumer Services, the owner or operator of an agricultural nonpoint source addressed by such rule shall either implement interim measures or best management practices or demonstrate compliance with state water quality standards addressed by the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067 by conducting monitoring prescribed by the department or the district. Owners or operators of agricultural nonpoint sources who implement interim measures or best management practices adopted by rule of the Department of Agriculture and Consumer Services shall be subject to s. 403.067.

4. The district or department shall conduct monitoring at representative sites to verify the effectiveness of agricultural nonpoint source best management practices.

5. Where water quality problems are detected for agricultural nonpoint sources despite the appropriate implementation of adopted best management practices, a reevaluation of the best management practices shall be conducted pursuant to s. 403.067(7)(c)4. If the reevaluation determines that the best management practices or other measures require modification, the rule shall be revised to require implementation of the modified practice within a reasonable period as specified in the rule.

6. As provided in s. 403.067, nonagricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Watershed Protection Program as part of a phased approach of management strategies within the Lake Okeechobee Basin Management Action Plan, shall be implemented on an expedited basis.

7. The department and the district are directed to work with the University of Florida Institute of Food and Agricultural Sciences to develop appropriate nutrient application rates for all nonagricultural soil amendments in the watershed. As provided in s. 403.067, the department, in consultation with the district and affected parties, shall develop nonagricultural nonpoint source interim measures, best management practices, or other measures necessary for Lake Okeechobee watershed total maximum daily load reduction. Development of nonagricultural nonpoint source best management practices shall initially focus on those priority basins listed in sub-subparagraph (a)1.a. The department, the district, and affected parties shall conduct an ongoing program for improvement of existing and development of new interim measures and best management practices. The department or the district shall adopt such practices by rule.

8. Where nonagricultural nonpoint source best management practices or interim measures have been developed by the department and adopted by the district, the owner or operator of a nonagricultural nonpoint source shall implement interim measures or best management practices and be subject to s. 403.067.

9. As provided in s. 403.067, the district or the department shall conduct monitoring at representative sites to verify the effectiveness of nonagricultural nonpoint source best management practices.

10. Where water quality problems are detected for nonagricultural nonpoint sources despite the appropriate implementation of adopted best management practices, a reevaluation of the best management practices shall be conducted pursuant to s. 403.067(7)(c)4. If the reevaluation determines that the best management practices or other measures require modification, the rule shall be revised to require implementation of the modified practice within a reasonable time period as specified in the rule.

11. Subparagraphs 2. and 7. do not preclude the department or the district from requiring compliance with water quality standards or with current best management practices requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Subparagraphs 2. and 7. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

12. The program of agricultural best management practices set forth in the Everglades Program of the district meets the requirements of this paragraph and s. 403.067(7) for the Lake Okeechobee watershed. An entity in compliance with the best management practices set forth in the Everglades Program of the district may elect to use that permit in lieu of the requirements of this paragraph. The provisions of subparagraph 5. apply to this subparagraph. This subparagraph does not alter any requirement of s. 373.4592.

13. The Department of Agriculture and Consumer Services, in cooperation with the department and the district, shall provide technical and financial assistance for implementation of agricultural best management practices, subject to the availability of funds. The department and district shall provide technical and financial assistance for implementation of nonagricultural nonpoint source best management practices, subject to the availability of funds.

14. Projects that reduce the phosphorus load originating from domestic wastewater systems within the Lake Okeechobee watershed shall be given funding priority in the department's revolving loan program under s. 403.1835. The department shall coordinate and provide assistance to those local governments seeking financial assistance for such priority projects.

15. Projects that make use of private lands, or lands held in trust for Indian tribes, to reduce nutrient loadings or concentrations within a basin by one or more of the following methods: restoring the natural hydrology of the basin, restoring wildlife habitat or impacted wetlands, reducing peak flows after storm events, increasing aquifer recharge, or protecting range and timberland from conversion to development, are eligible for grants available under this section from the coordinating agencies. For projects of otherwise equal priority, special funding priority will be given to those projects that make best use of the methods outlined above that involve public-private partnerships or that obtain federal match money. Preference ranking above the special funding priority will be given to projects located in a rural area of opportunity designated by the Governor. Grant applications may be submitted by any person or tribal entity, and eligible projects may include, but are not limited to, the purchase of conservation and flowage easements, hydrologic restoration of wetlands, creating treatment wetlands, development of a management plan for natural resources, and financial support to implement a management plan.

16. The department shall require all entities disposing of domestic wastewater biosolids within the Lake Okeechobee watershed and the remaining areas of Okeechobee, Glades, and Hendry Counties to develop and submit to the department an agricultural use plan that limits applications based upon phosphorus loading consistent with the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067. The department may not authorize the disposal of domestic wastewater biosolids within the Lake Okeechobee watershed unless the applicant can affirmatively demonstrate that the phosphorus in the biosolids will not add to phosphorus loadings in Lake Okeechobee or its tributaries. This demonstration shall be based on achieving a net balance between phosphorus imports relative to exports on the permitted application site. Exports shall include only phosphorus removed from the Lake Okeechobee watershed through products generated on the permitted application site. This prohibition does not apply to Class AA biosolids that are marketed and distributed as fertilizer products in accordance with department rule.

17. Private and government-owned utilities within Monroe, Miami-Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River, Okeechobee, Highlands, Hendry, and Glades Counties that dispose of wastewater biosolids sludge from utility operations and septic removal by land spreading in the Lake Okeechobee watershed may use a line item on local sewer rates to cover wastewater biosolids treatment and disposal if such disposal and treatment is done by approved alternative treatment methodology at a facility located within the areas designated by the Governor as rural areas of opportunity pursuant to s. 288.0656. This additional line item is an environmental protection disposal fee above the present sewer rate and may not be considered a part of the present sewer rate to customers, notwithstanding provisions to the contrary in chapter 367. The fee shall be established by the county commission or its designated assignee in the county in which the alternative method treatment facility is located. The fee shall be calculated to be no higher than that necessary to recover the facility's prudent cost of providing the service. Upon request by an affected county commission, the Florida Public Service Commission will provide assistance in establishing the fee. Further, for utilities and utility authorities that use the additional line item environmental protection disposal fee, such fee may not be considered a rate increase under the rules of the Public Service Commission and shall be exempt from such rules. Utilities using this section may immediately include in their sewer invoicing the new environmental protection

disposal fee. Proceeds from this environmental protection disposal fee shall be used for treatment and disposal of wastewater biosolids, including any treatment technology that helps reduce the volume of biosolids that require final disposal, but such proceeds may not be used for transportation or shipment costs for disposal or any costs relating to the land application of biosolids in the Lake Okeechobee watershed.

18. No less frequently than once every 3 years, the Florida Public Service Commission or the county commission through the services of an independent auditor shall perform a financial audit of all facilities receiving compensation from an environmental protection disposal fee. The Florida Public Service Commission or the county commission through the services of an independent auditor shall also perform an audit of the methodology used in establishing the environmental protection disposal fee. The Florida Public Service Commission or the county commission shall, within 120 days after completion of an audit, file the audit report with the President of the Senate and the Speaker of the House of Representatives and shall provide copies to the county commissions of the counties set forth in subparagraph 17. The books and records of any facilities receiving compensation from an environmental protection disposal fee shall be open to the Florida Public Service Commission and the Auditor General for review upon request.

19. The Department of Health shall require all entities disposing of septage within the Lake Okeechobee watershed to develop and submit to that agency an agricultural use plan that limits applications based upon phosphorus loading consistent with the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067.

20. The Department of Agriculture and Consumer Services shall initiate rulemaking requiring entities within the Lake Okeechobee watershed which land-apply animal manure to develop resource management system level conservation plans, according to United States Department of Agriculture criteria, which limit such application. Such rules must include criteria and thresholds for the requirement to develop a conservation or nutrient management plan, requirements for plan approval, site inspection requirements, and recordkeeping requirements.

21. The district shall revise chapter 40E-61, Florida Administrative Code, to be consistent with this section and s. 403.067; provide for a monitoring program for nonpoint source dischargers required to monitor water quality by s. 403.067; and provide for the results of such monitoring to be reported to the coordinating agencies.

(c) *Lake Okeechobee Exotic Species Control Program.*—The coordinating agencies shall identify the exotic species that threaten the native flora and fauna within the Lake Okeechobee watershed and develop and implement measures to protect the native flora and fauna.

(d) *Lake Okeechobee Internal Phosphorus Management Program.*—The district, in cooperation with the other coordinating agencies and interested parties, shall evaluate the feasibility of Lake Okeechobee internal phosphorus load removal projects. The evaluation shall be based on technical feasibility, as well as economic considerations, and shall consider all reasonable methods of phosphorus removal. If projects are found to be feasible, the district shall immediately pursue the design, funding, and permitting for implementing such projects.

(e) *Lake Okeechobee Watershed Protection Program implementation.*—The coordinating agencies shall be jointly responsible for implementing the Lake Okeechobee Watershed Protection Program, consistent with the statutory authority and responsibility of each agency. Annual funding priorities shall be jointly established, and the highest priority shall be assigned to programs and projects that address sources that have the highest relative contribution to loading and the greatest potential for reductions needed to meet the total maximum daily loads. In determining funding priorities, the coordinating agencies shall also consider the need for regulatory compliance, the extent to which the program or project is ready to proceed, and the availability of federal matching funds or other nonstate funding, including public-private partnerships. Federal and other nonstate funding shall be maximized to the greatest extent practicable.

(f) *Priorities and implementation schedules.*—The coordinating agencies are authorized and directed to establish priorities and implementation schedules for the achievement of total maximum daily loads, compliance with the requirements of s. 403.067, and compliance with applicable water quality standards within the waters and watersheds subject to this section.

(4) CALOOSAHATCHEE RIVER WATERSHED PROTECTION PROGRAM AND ST. LUCIE RIVER WATERSHED PROTECTION PROGRAM.—A protection program shall be developed and implemented as specified in this subsection. To protect and restore surface water resources, the program shall address the reduction of pollutant

loadings, restoration of natural hydrology, and compliance with applicable state water quality standards. The program shall be achieved through a phased program of implementation. In addition, pollutant load reductions based upon adopted total maximum daily loads established in accordance with s. 403.067 shall serve as a program objective. In the development and administration of the program, the coordinating agencies shall maximize opportunities provided by federal and local government cost-sharing programs and opportunities for partnerships with the private sector and local government. The program shall include a goal for salinity envelopes and freshwater inflow targets for the estuaries based upon existing research and documentation. The goal may be revised as new information is available. This goal shall seek to reduce the frequency and duration of undesirable salinity ranges while meeting the other water-related needs of the region, including water supply and flood protection, while recognizing the extent to which water inflows are within the control and jurisdiction of the district.

(a) *Caloosahatchee River Watershed Protection Plan.*—The district, in cooperation with the other coordinating agencies, Lee County, and affected counties and municipalities, shall complete a River Watershed Protection Plan in accordance with this subsection. The Caloosahatchee River Watershed Protection Plan shall identify the geographic extent of the watershed, be coordinated as needed with the plans developed pursuant to paragraph (3)(a) and paragraph (c) of this subsection, and include the Caloosahatchee River Watershed Construction Project and the Caloosahatchee River Watershed Research and Water Quality Monitoring Program.

1. Caloosahatchee River Watershed Construction Project.—To improve the hydrology, water quality, and aquatic habitats within the watershed, the district shall, no later than January 1, 2012, plan, design, and construct the initial phase of the Watershed Construction Project. In doing so, the district shall:

a. Develop and designate the facilities to be constructed to achieve stated goals and objectives of the Caloosahatchee River Watershed Protection Plan.

b. Conduct scientific studies that are necessary to support the design of the Caloosahatchee River Watershed Construction Project facilities.

c. Identify the size and location of all such facilities.

d. Provide a construction schedule for all such facilities, including the sequencing and specific timeframe for construction of each facility.

e. Provide a schedule for the acquisition of lands or sufficient interests necessary to achieve the construction schedule.

f. Provide a schedule of costs and benefits associated with each construction project and identify funding sources.

g. To ensure timely implementation, coordinate the design, scheduling, and sequencing of project facilities with the coordinating agencies, Lee County, other affected counties and municipalities, and other affected parties.

2. Caloosahatchee River Watershed Research and Water Quality Monitoring Program.—The district, in cooperation with the other coordinating agencies and local governments, shall implement a Caloosahatchee River Watershed Research and Water Quality Monitoring Program that builds upon the district's existing research program and that is sufficient to carry out, comply with, or assess the plans, programs, and other responsibilities created by this subsection. The program shall also conduct an assessment of the water volumes and timing from Lake Okeechobee and the Caloosahatchee River watershed and their relative contributions to the timing and volume of water delivered to the estuary.

(b) *Caloosahatchee River Watershed Basin Management Action Plans.*—The basin management action plans adopted pursuant to s. 403.067 for the Caloosahatchee River watershed shall be the Caloosahatchee River Watershed Pollutant Control Program. The plans shall be designed to be a multifaceted approach to reducing pollutant loads by improving the management of pollutant sources within the Caloosahatchee River watershed through implementation of regulations and best management practices, development and implementation of improved best management practices, improvement and restoration of the hydrologic function of natural and managed systems, and utilization of alternative technologies for pollutant reduction, such as cost-effective biologically based, hybrid wetland/chemical and other innovative nutrient control technologies. As provided in s. 403.067(7)(a)6., the Caloosahatchee River Watershed Basin Management Action Plans must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5

years and shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Revisions to the plans shall be made, as appropriate, as a result of each 5-year review. Revisions to the basin management action plans shall be made by the department in cooperation with the basin stakeholders. Revisions to best management practices or other measures must follow the procedures set forth in s. 403.067(7)(c)4. Revised basin management action plans must be adopted pursuant to s. 403.067(7)(a)5. The department shall develop an implementation schedule establishing 5-year, 10-year, and 15-year measurable milestones and targets to achieve the total maximum daily load no more than 20 years after adoption of the plan. The initial implementation schedule shall be used to provide guidance for planning and funding purposes and is exempt from chapter 120. Upon the first 5-year review, the implementation schedule shall be adopted as part of the plans. If achieving the total maximum daily load within 20 years is not practicable, the implementation schedule must contain an explanation of the constraints that prevent achievement of the total maximum daily load within 20 years, an estimate of the time needed to achieve the total maximum daily load, and additional 5-year measurable milestones, as necessary. The coordinating agencies shall facilitate the use of federal programs that offer opportunities for water quality treatment, including preservation, restoration, or creation of wetlands on agricultural lands.

1. Nonpoint source best management practices consistent with s. 403.067, designed to achieve the objectives of the Caloosahatchee River Watershed Protection Program, shall be implemented on an expedited basis. The coordinating agencies may develop an intergovernmental agreement with local governments to implement the nonagricultural, nonpoint source best management practices within their respective geographic boundaries.

2. This subsection does not preclude the department or the district from requiring compliance with water quality standards, adopted total maximum daily loads, or current best management practices requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. This subsection applies only to the extent that it does not conflict with any rules adopted by the department or district which are necessary to maintain a federally delegated or approved program.

3. Projects that make use of private lands, or lands held in trust for Indian tribes, to reduce pollutant loadings or concentrations within a basin, or that reduce the volume of harmful discharges by one or more of the following methods: restoring the natural hydrology of the basin, restoring wildlife habitat or impacted wetlands, reducing peak flows after storm events, or increasing aquifer recharge, are eligible for grants available under this section from the coordinating agencies.

4. The Caloosahatchee River Watershed Basin Management Action Plans shall require assessment of current water management practices within the watershed and shall require development of recommendations for structural, nonstructural, and operational improvements. Such recommendations shall consider and balance water supply, flood control, estuarine salinity, aquatic habitat, and water quality considerations.

5. The department may not authorize the disposal of domestic wastewater biosolids within the Caloosahatchee River watershed unless the applicant can affirmatively demonstrate that the nutrients in the biosolids will not add to nutrient loadings in the watershed. This demonstration shall be based on achieving a net balance between nutrient imports relative to exports on the permitted application site. Exports shall include only nutrients removed from the watershed through products generated on the permitted application site. This prohibition does not apply to Class AA biosolids that are marketed and distributed as fertilizer products in accordance with department rule.

6. The Department of Health shall require all entities disposing of septage within the Caloosahatchee River watershed to develop and submit to that agency an agricultural use plan that limits applications based upon nutrient loading consistent with any basin management action plan adopted pursuant to s. 403.067.

7. The Department of Agriculture and Consumer Services shall require entities within the Caloosahatchee River watershed which land-apply animal manure to develop a resource management system level conservation plan, according to United States Department of Agriculture criteria, which limit such application. Such rules shall include criteria and thresholds for the requirement to develop a conservation or nutrient management plan, requirements for plan approval, site inspection requirements, and recordkeeping requirements.

8. The district shall initiate rulemaking to provide for a monitoring program for nonpoint source dischargers required to monitor water quality pursuant to s. 403.067(7)(b)2.g. or (c)3. The results of such monitoring must be reported to the coordinating agencies.

(c) *St. Lucie River Watershed Protection Plan.*—The district, in cooperation with the other coordinating agencies, Martin County, and affected counties and municipalities shall complete a plan in accordance with this subsection. The St. Lucie River Watershed Protection Plan shall identify the geographic extent of the watershed, be coordinated as needed with the plans developed pursuant to paragraph (3)(a) and paragraph (a) of this subsection, and include the St. Lucie River Watershed Construction Project and St. Lucie River Watershed Research and Water Quality Monitoring Program.

1. St. Lucie River Watershed Construction Project.—To improve the hydrology, water quality, and aquatic habitats within the watershed, the district shall, no later than January 1, 2012, plan, design, and construct the initial phase of the Watershed Construction Project. In doing so, the district shall:

a. Develop and designate the facilities to be constructed to achieve stated goals and objectives of the St. Lucie River Watershed Protection Plan.

b. Identify the size and location of all such facilities.

c. Provide a construction schedule for all such facilities, including the sequencing and specific timeframe for construction of each facility.

d. Provide a schedule for the acquisition of lands or sufficient interests necessary to achieve the construction schedule.

e. Provide a schedule of costs and benefits associated with each construction project and identify funding sources.

f. To ensure timely implementation, coordinate the design, scheduling, and sequencing of project facilities with the coordinating agencies, Martin County, St. Lucie County, other interested parties, and other affected local governments.

2. St. Lucie River Watershed Research and Water Quality Monitoring Program.—The district, in cooperation with the other coordinating agencies and local governments, shall establish a St. Lucie River Watershed Research and Water Quality Monitoring Program that builds upon the district's existing research program and that is sufficient to carry out, comply with, or assess the plans, programs, and other responsibilities created by this subsection. The district shall also conduct an assessment of the water volumes and timing from Lake Okeechobee and the St. Lucie River watershed and their relative contributions to the timing and volume of water delivered to the estuary.

(d) *St. Lucie River Watershed Basin Management Action Plan.*—The basin management action plan for the St. Lucie River watershed adopted pursuant to s. 403.067 shall be the St. Lucie River Watershed Pollutant Control Program and shall be designed to be a multifaceted approach to reducing pollutant loads by improving the management of pollutant sources within the St. Lucie River watershed through implementation of regulations and best management practices, development and implementation of improved best management practices, improvement and restoration of the hydrologic function of natural and managed systems, and use of alternative technologies for pollutant reduction, such as cost-effective biologically based, hybrid wetland/chemical and other innovative nutrient control technologies. As provided in s. 403.067(7)(a)6., the St. Lucie River Watershed Basin Management Action Plan must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years and shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Revisions to the plan shall be made, as appropriate, as a result of each 5-year review. Revisions to the basin management action plan shall be made by the department in cooperation with the basin stakeholders. Revisions to best management practices or other measures must follow the procedures set forth in s. 403.067(7)(c)4. Revised basin management action plans must be adopted pursuant to s. 403.067(7)(a)5. The department shall develop an implementation schedule establishing 5-year, 10-year, and 15-year measurable milestones and targets to achieve the total maximum daily load no more than 20 years after adoption of the plan. The initial implementation schedule shall be used to provide guidance for planning and funding purposes and is exempt from chapter 120. Upon the first 5-year review, the implementation schedule shall be adopted as part of the plan. If achieving the total maximum daily load within 20 years is not practicable, the implementation schedule must contain an explanation of the constraints that prevent achievement of the total maximum daily load within 20 years, an estimate of the time needed to achieve the total maximum daily load, and additional 5-year measurable milestones, as necessary. The coordinating agencies shall facilitate the use of federal

programs that offer opportunities for water quality treatment, including preservation, restoration, or creation of wetlands on agricultural lands.

1. Nonpoint source best management practices consistent with s. 403.067, designed to achieve the objectives of the St. Lucie River Watershed Protection Program, shall be implemented on an expedited basis. The coordinating agencies may develop an intergovernmental agreement with local governments to implement the nonagricultural nonpoint source best management practices within their respective geographic boundaries.

2. This subsection does not preclude the department or the district from requiring compliance with water quality standards, adopted total maximum daily loads, or current best management practices requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. This subsection applies only to the extent that it does not conflict with any rules adopted by the department or district which are necessary to maintain a federally delegated or approved program.

3. Projects that make use of private lands, or lands held in trust for Indian tribes, to reduce pollutant loadings or concentrations within a basin, or that reduce the volume of harmful discharges by one or more of the following methods: restoring the natural hydrology of the basin, restoring wildlife habitat or impacted wetlands, reducing peak flows after storm events, or increasing aquifer recharge, are eligible for grants available under this section from the coordinating agencies.

4. The St. Lucie River Watershed Basin Management Action Plan shall require assessment of current water management practices within the watershed and shall require development of recommendations for structural, nonstructural, and operational improvements. Such recommendations shall consider and balance water supply, flood control, estuarine salinity, aquatic habitat, and water quality considerations.

5. The department may not authorize the disposal of domestic wastewater biosolids within the St. Lucie River watershed unless the applicant can affirmatively demonstrate that the nutrients in the biosolids will not add to nutrient loadings in the watershed. This demonstration shall be based on achieving a net balance between nutrient imports relative to exports on the permitted application site. Exports shall include only nutrients removed from the St. Lucie River watershed through products generated on the permitted application site. This prohibition does not apply to Class AA biosolids that are marketed and distributed as fertilizer products in accordance with department rule.

6. The Department of Health shall require all entities disposing of septage within the St. Lucie River watershed to develop and submit to that agency an agricultural use plan that limits applications based upon nutrient loading consistent with any basin management action plan adopted pursuant to s. 403.067.

7. The Department of Agriculture and Consumer Services shall initiate rulemaking requiring entities within the St. Lucie River watershed which land-apply animal manure to develop a resource management system level conservation plan, according to United States Department of Agriculture criteria, which limit such application. Such rules shall include criteria and thresholds for the requirement to develop a conservation or nutrient management plan, requirements for plan approval, site inspection requirements, and recordkeeping requirements.

8. The district shall initiate rulemaking to provide for a monitoring program for nonpoint source dischargers required to monitor water quality pursuant to s. 403.067(7)(b)2.g. or (c)3. The results of such monitoring must be reported to the coordinating agencies.

(e) *River Watershed Protection Plan implementation.*—The coordinating agencies shall be jointly responsible for implementing the River Watershed Protection Plans, consistent with the statutory authority and responsibility of each agency. Annual funding priorities shall be jointly established, and the highest priority shall be assigned to programs and projects that have the greatest potential for achieving the goals and objectives of the plans. In determining funding priorities, the coordinating agencies shall also consider the need for regulatory compliance, the extent to which the program or project is ready to proceed, and the availability of federal or local government matching funds. Federal and other nonstate funding shall be maximized to the greatest extent practicable.

(f) *Evaluation.*—Beginning March 1, 2020, and every 5 years thereafter, concurrent with the updates of the basin management action plans adopted pursuant to s. 403.067, the department, in cooperation with the other coordinating agencies, shall conduct an evaluation of any pollutant load reduction goals, as well as any other specific objectives and goals, as stated in the River Watershed Protection Programs. The district shall identify modifications to facilities of the

River Watershed Construction Projects, as appropriate, or any other elements of the River Watershed Protection Programs. The evaluation shall be included in the annual progress report submitted pursuant to this section.

(g) *Priorities and implementation schedules.*—The coordinating agencies are authorized and directed to establish priorities and implementation schedules for the achievement of total maximum daily loads, the requirements of s. 403.067, and compliance with applicable water quality standards within the waters and watersheds subject to this section.

(5) ADOPTION AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS AND DEVELOPMENT OF BASIN MANAGEMENT ACTION PLANS.—The department is directed to expedite development and adoption of total maximum daily loads for the Caloosahatchee River and estuary. The department is further directed to propose for final agency action total maximum daily loads for nutrients in the tidal portions of the Caloosahatchee River and estuary. The department shall initiate development of basin management action plans for Lake Okeechobee, the Caloosahatchee River watershed and estuary, and the St. Lucie River watershed and estuary as provided in s. 403.067 as follows:

(a) Basin management action plans shall be developed as soon as practicable as determined necessary by the department to achieve the total maximum daily loads established for the Lake Okeechobee watershed and the estuaries.

(b) The Phase II technical plan development pursuant to paragraph (3)(a), and the River Watershed Protection Plans developed pursuant to paragraphs (4)(a) and (c), shall provide the basis for basin management action plans developed by the department.

(c) As determined necessary by the department to achieve the total maximum daily loads, additional or modified projects or programs that complement those in the legislatively ratified plans may be included during the development of the basin management action plan.

(d) As provided in s. 403.067, management strategies and pollution reduction requirements set forth in a basin management action plan subject to permitting by the department under subsection (7) must be completed pursuant to the schedule set forth in the basin management action plan, as amended. The implementation schedule may extend beyond the 5-year permit term.

(e) As provided in s. 403.067, management strategies and pollution reduction requirements set forth in a basin management action plan for a specific pollutant of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a department or district issued permit or a permit modification issued in accordance with subsection (7).

(6) ANNUAL PROGRESS REPORT.—Each March 1 the district, in cooperation with the other coordinating agencies, shall report on implementation of this section as part of the consolidated annual report required in s. 373.036(7). The annual report shall include a summary of the conditions of the hydrology, water quality, and aquatic habitat in the northern Everglades based on the results of the Research and Water Quality Monitoring Programs, the status of the Lake Okeechobee Watershed Construction Project, the status of the Caloosahatchee River Watershed Construction Project, and the status of the St. Lucie River Watershed Construction Project. In addition, the report shall contain an annual accounting of the expenditure of funds from the Save Our Everglades Trust Fund. At a minimum, the annual report shall provide detail by program and plan, including specific information concerning the amount and use of funds from federal, state, or local government sources. In detailing the use of these funds, the district shall indicate those designated to meet requirements for matching funds. The district shall prepare the report in cooperation with the other coordinating agencies and affected local governments. The department shall report on the status of the Lake Okeechobee Basin Management Action Plan, the Caloosahatchee River Watershed Basin Management Action Plan, and the St. Lucie River Watershed Basin Management Action Plan. The Department of Agriculture and Consumer Services shall report on the status of the implementation of the agricultural nonpoint source best management practices, including an implementation assurance report summarizing survey responses and response rates, site inspections, and other methods used to verify implementation of and compliance with best management practices in the Lake Okeechobee, Caloosahatchee River, and St. Lucie River watersheds.

(7) LAKE OKEECHOBEE PROTECTION PERMITS.—

(a) The Legislature finds that the Lake Okeechobee Watershed Protection Program will benefit Lake Okeechobee and downstream receiving waters and is in the public interest. The Lake Okeechobee Watershed Construction Project and structures discharging into or from Lake Okeechobee shall be constructed, operated, and maintained in accordance with this section.

(b) Permits obtained pursuant to this section are in lieu of all other permits under this chapter or chapter 403, except those issued under s. 403.0885, if applicable. Additional permits are not required for the Lake Okeechobee Watershed Construction Project, or structures discharging into or from Lake Okeechobee, if such project or structures are permitted under this section. Construction activities related to implementation of the Lake Okeechobee Watershed Construction Project may be initiated before final agency action, or notice of intended agency action, on any permit from the department under this section.

(c)1. Owners or operators of existing structures which discharge into or from Lake Okeechobee that were subject to Department Consent Orders 91-0694, 91-0705, 91-0706, 91-0707, and RT50-205564 and that are subject to s. 373.4592(4)(a) do not require a permit under this section and shall be governed by permits issued under ss. 373.413 and 373.416 and the Lake Okeechobee Basin Management Action Plan adopted pursuant to s. 403.067.

2. For the purposes of this paragraph, owners and operators of existing structures which are subject to s. 373.4592(4)(a) and which discharge into or from Lake Okeechobee shall be deemed in compliance with this paragraph if they are in full compliance with the conditions of permits under chapter 40E-63, Florida Administrative Code.

3. By January 1, 2017, the district shall submit to the department a complete application for a permit modification to the Lake Okeechobee structure permits to incorporate proposed changes necessary to ensure that discharges through the structures covered by this permit are consistent with the basin management action plan adopted pursuant to s. 403.067.

(d) The department shall require permits for district regional projects that are part of the Lake Okeechobee Watershed Construction Project. However, projects that qualify as exempt pursuant to s. 373.406 do not require permits under this section. Such permits shall be issued for a term of 5 years upon the demonstration of reasonable assurances that:

1. District regional projects that are part of the Lake Okeechobee Watershed Construction Project shall achieve the design objectives for phosphorus required in subparagraph (3)(a)1.;

2. For water quality standards other than phosphorus, the quality of water discharged from the facility is of equal or better quality than the inflows;

3. Discharges from the facility do not pose a serious danger to public health, safety, or welfare; and

4. Any impacts on wetlands or state-listed species resulting from implementation of that facility of the Lake Okeechobee Construction Project are minimized and mitigated, as appropriate.

(e) At least 60 days before the expiration of any permit issued under this section, the permittee may apply for a renewal thereof for a period of 5 years.

(f) Permits issued under this section may include any standard conditions provided by department rule which are appropriate and consistent with this section.

(g) Permits issued under this section may be modified, as appropriate, upon review and approval by the department.

(8) RESTRICTIONS ON WATER DIVERSIONS.—The South Florida Water Management District shall not divert waters to the St. Lucie River, the Indian River estuary, the Caloosahatchee River or its estuary, or the Everglades National Park, in such a way that the state water quality standards are violated, that the nutrients in such diverted waters adversely affect indigenous vegetation communities or wildlife, or that fresh waters diverted to the St. Lucie River or the Caloosahatchee or Indian River estuaries adversely affect the estuarine vegetation or wildlife, unless the receiving waters will biologically benefit by the diversion. However, diversion is permitted when an emergency is declared by the water management district, if the Secretary of Environmental Protection concurs.

(9) PRESERVATION OF PROVISIONS RELATING TO THE EVERGLADES.—Nothing in this section shall be construed to modify any provision of s. 373.4592.

(10) RIGHTS OF SEMINOLE TRIBE OF FLORIDA.—Nothing in this section is intended to diminish or alter the governmental authority and powers of the Seminole Tribe of Florida, or diminish or alter the rights of that tribe,

including, but not limited to, rights under the water rights compact among the Seminole Tribe of Florida, the state, and the South Florida Water Management District as enacted by Pub. L. No. 100-228, 101 Stat. 1556, and chapter 87-292, Laws of Florida, and codified in s. 285.165, and rights under any other agreement between the Seminole Tribe of Florida and the state or its agencies. No land of the Seminole Tribe of Florida shall be used for water storage or stormwater treatment without the consent of the tribe.

(11) RELATIONSHIP TO STATE WATER QUALITY STANDARDS.—Nothing in this section shall be construed to modify any existing state water quality standard or to modify the provisions of s. 403.067(6) and (7)(a).

(12) RULES.—The governing board of the district is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

(13) PRESERVATION OF AUTHORITY.—Nothing in this section shall be construed to restrict the authority otherwise granted to agencies pursuant to this chapter and chapter 403, and provisions of this section shall be deemed supplemental to the authority granted to agencies pursuant to this chapter and chapter 403.

History.—s. 6, ch. 87-97; s. 274, ch. 94-356; s. 1011, ch. 95-148; s. 189, ch. 99-245; s. 1, ch. 2000-130; s. 6, ch. 2001-172; s. 1, ch. 2001-193; s. 3, ch. 2002-165; s. 42, ch. 2002-296; s. 1, ch. 2005-29; s. 14, ch. 2005-36; s. 7, ch. 2005-166; s. 14, ch. 2005-291; s. 4, ch. 2007-191; s. 3, ch. 2007-253; s. 87, ch. 2008-4; s. 1, ch. 2013-146; s. 39, ch. 2014-218; s. 15, ch. 2016-1.

373.4596 State compliance with stormwater management programs.—The state, through the Department of Management Services, the Department of Transportation, and other agencies, shall construct, operate, and maintain buildings, roads, and other facilities it owns, leases, or manages to fully comply with state, water management district, and local government stormwater management programs.

History.—s. 40, ch. 89-279; s. 298, ch. 92-279; s. 55, ch. 92-326.

373.4597 The Geneva Freshwater Lens Protection Act.—

(1) The Legislature finds that the Geneva Freshwater Lens, a single source water supply, is a unique and valuable water resource for the citizens of northeast Seminole County and, in general, to the citizens of this state and that the lens is a precious natural resource system vital to the health and diversity of the regional ecosystem. It is the intent of the Legislature that this resource be protected for future generations of citizens of this state and that the St. Johns River Water Management District implement the laws of this state and administrative rules of the district to that end.

(2) The recharge area of the Geneva Freshwater Lens shall be delineated by rule by the St. Johns River Water Management District, to be based on the 20-foot (NGVD) contour of the recharge area prior to development, using a static line and based on the quadrangle maps referenced in the United States Geological Survey Report titled "Water Resources Investigation 86-4078."

History.—s. 2, ch. 95-377; s. 4, ch. 2020-144.

373.4598 Water storage reservoirs.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature declares that an emergency exists regarding the St. Lucie and Caloosahatchee estuaries due to the high-volume freshwater discharges to the east and west of the lake. Such discharges have manifested in widespread algae blooms, public health impacts, and extensive environmental harm to wildlife and the aquatic ecosystem. These conditions, as outlined in the state of emergency declared by the Governor under Executive Orders 16-59, 16-155, and 16-156, threaten the ecological integrity of the estuaries and the economic viability of the state and affected communities.

(b) The Legislature finds that increasing water storage is necessary to reduce the high-volume freshwater discharges from the lake to the estuaries and restore the hydrological connection to the Everglades. CERP projects necessary to reduce the discharges and improve the flows to the Everglades should receive priority funding, such as the Lake Okeechobee Watershed project to the north of the lake; the Everglades Agricultural Area reservoir project to the south of the lake; the C-43 West Basin Reservoir Storage project to the west of the lake; and the Indian River Lagoon-South project to the east of the lake.

(c) The Legislature finds that the rate of funding for CERP must be increased if restoration will be achieved within the timeframe originally envisioned and that the delay in substantial progress toward completing critical elements of

restoration, such as southern storage, will cause irreparable harm to natural systems and, ultimately, increase the cost of restoration. A substantial commitment to the advancement of projects identified as part of CERP will reduce ongoing ecological damage to the St. Lucie and Caloosahatchee estuaries.

(d) The Legislature recognizes that the EAA reservoir project was conditionally authorized in the Water Resources Development Act of 2000 as a project component of CERP. Unless other funding is available, the Legislature directs the district, in the implementation of the reservoir project, to abide by applicable state and federal law in order to do that which is required to obtain federal credit under CERP. If the district implements the EAA reservoir project as a project component as defined in s. 373.1501, the district must abide by all applicable state and federal law relating to such projects.

(e) This section is not intended to diminish the commitments made by the state in chapter 2016-201, Laws of Florida.

(2) DEFINITIONS.—As used in this section, the term:

(a) "A-1 parcel" means an area of district-owned land located between the Miami Canal and North New River Canal consisting of approximately 17,000 acres which is bordered to the north by private agricultural lands, to the east by U.S. Highway 27, to the south by Stormwater Treatment Area 3/4, and to the west by the Holey Land Wildlife Management Area and the A-2 parcel.

(b) "A-2 parcel" means an area of district-owned land located between the Miami Canal and the North New River Canal consisting of approximately 14,000 acres of land to the east of the Miami Canal which is bordered to the north by private agricultural lands, to the east by the A-1 parcel, and to the south by the Holey Land Wildlife Management Area.

(c) "Board" means the Board of Trustees of the Internal Improvement Trust Fund.

(d) "Central Everglades Planning Project" or "CEPP" means the suite of CERP projects authorized as the "Central Everglades" project in the Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322.

(e) "Comprehensive Everglades Restoration Plan" or "CERP" has the same meaning as the term "comprehensive plan" as defined in s. 373.470.

(f) "Corps" means the United States Army Corps of Engineers.

(g) "District" means the South Florida Water Management District.

(h) "Everglades Agricultural Area" or "EAA" has the same meaning as in s. 373.4592.

(i) "EAA reservoir project" means the Everglades Agricultural Area storage reservoir, known as Component G of CERP. The term includes any necessary water quality features that are required to meet state and federal water quality standards.

(j) "Lake" means Lake Okeechobee.

(k) "Option agreement" means the Second Amended and Restated Agreement for Sale and Purchase between the seller, United States Sugar Corporation, SBG Farms, Inc., and Southern Garden Groves Corporation, and the buyer, the South Florida Water Management District, dated August 12, 2010.

(3) EAA LEASE AGREEMENTS.—

(a) The district and the board are authorized to negotiate the amendment or termination of leases on lands within the EAA for exchange or use for the EAA reservoir project. Any such lease must be terminated in accordance with the lease terms or upon the voluntary agreement of the lessor and lessee. In the event of any such lease termination, the lessee must be permitted to continue to farm on a field-by-field basis until such time as the lessee's operations are incompatible with implementation of the EAA reservoir project, as reasonably determined by the lessor. The district and the board may include the swapping of land, assignment of leases, and other methods of providing valuable consideration in negotiating the amendments to or termination of such lease agreements.

(b) Any lease agreement relating to land in the EAA leased to the Prison Rehabilitative Industries and Diversified Enterprises, Inc., (PRIDE Enterprises) for an agricultural work program is required to be terminated in accordance with the terms of the lease agreement. Any such land previously leased may be made available by the board to the district for exchange for lands suitable for the EAA reservoir project or may be leased for agricultural purposes. The terms of any such lease must include provisions authorizing the lessor to terminate the lease at any time during the lease term as to any portion, or all of the premises, to be used for an environmental restoration purpose. The terms of

the lease may not require more than 1 year's notice in order for such termination to be effective. Any agricultural owner managing lands subject to an agreement with PRIDE shall be given the right of first refusal in leasing any such lands.

(c) If, after any termination of an EAA lease agreement, ratoon, stubble, or residual crop remaining on the lease premises is harvested or otherwise used by the lessor or any third party, the lessee is entitled to be compensated for any documented, unamortized planting costs, and any unamortized capital costs associated with the lease and incurred before notice.

(4) LAND ACQUISITION.—The Legislature declares that acquiring land to increase water storage south of the lake is in the public interest and that the governing board of the district may acquire land, if necessary, to implement the EAA reservoir project with the goal of providing at least 240,000 acre-feet of water storage south of the lake. The use of eminent domain in the EAA for the purpose of implementing the EAA reservoir project is prohibited.

(a) Effective May 9, 2017, the district shall identify the lessees of the approximately 3,200 acres of land owned by the state or the district west of the A-2 parcel and east of the Miami Canal and the private property owners of the approximately 500 acres of land surrounded by such lands.

(b) By July 31, 2017, the district shall contact the lessors and landowners of the land identified pursuant paragraph (a) to express the district's interest in acquiring land through the purchase or exchange of lands or by the amendment or termination of lease agreements. If land swaps or purchases are necessary to assemble the required acreage, the participation of private landowners must be voluntary. The district shall contact the board to request that any lease of land identified pursuant to paragraph (a), the title to which is vested in the board, be amended or terminated. All appraisal reports, offers, and counteroffers in relation to this subsection are confidential and exempt from s. 119.07(1), as provided in s. 373.139.

(c) The board shall provide to the district, through direct acquisition in fee or by a supplemental agreement, any land, the title to which is vested in the board, that the district identifies as necessary to construct the EAA reservoir project.

(d) The total acreage necessary for additional water treatment may not exceed the amount reasonably required to meet state and federal water quality standards as determined using the water quality modeling tools of the district. The district shall use the latest version of the Dynamic Model for Stormwater Treatment Areas Model modeling tool and other modeling tools that will be required in the planning and design of the EAA reservoir project. If additional land not identified in paragraph (a) is necessary for the EAA reservoir project, the district shall acquire that land from willing sellers of property in conjunction with the development of the post-authorization change report.

(5) POST-AUTHORIZATION CHANGE REPORT.—

(a) The district is directed to request, by July 1, 2017, that the corps jointly develop a post-authorization change report with the district for CEPP to revise the project component located on the A-2 parcel with the goal of increasing water storage provided by the project component to a minimum of 240,000 acre-feet. Upon agreement with the corps, development of the report must begin by August 1, 2017, and does not preclude the implementation of the remaining CEPP project components.

(b) Using the A-2 parcel and the additional land identified pursuant to subsection (4) and without modifying the A-1 parcel, the report must evaluate:

1. The optimal configuration of the EAA reservoir project for providing at least 240,000 acre-feet of water storage; and

2. Any necessary increases in canal conveyance capacity to reduce the discharges to the St. Lucie or Caloosahatchee estuaries.

(c) If the district and the corps determine that an alternate configuration of water storage and water quality features providing for significantly more water storage, but no less than 360,000 acre-feet of water storage, south of the lake can be implemented on a footprint that includes modification to the A-1 parcel, the district is authorized to recommend such an alternative configuration in the report. Any such recommendation must include sufficient water quality treatment capacity to meet state and federal water quality standards.

(d) Pending congressional approval of the report, the district may begin the preliminary planning or construction of, or modification to, the project site to the extent appropriate, subject to the availability of funding. Upon receipt of

congressional approval of the report, construction of the EAA reservoir project shall be completed parallel with construction of the other CEPP project components, subject to the availability of funding.

(e) The district must report the status of the post-authorization change report to the Legislature by January 9, 2018. The status report must include information on the district's ability to obtain lease modifications and land acquisitions as provided in subsection (4). If the district in good faith believes that the post-authorization change report will receive ultimate approval but that an extension of the deadline provided in paragraph (7)(a) is needed, the district must include such a request in its status report and may be granted an extension by the Legislature. Any such extension must include a corresponding date by which the district must request the corps to initiate the project implementation report for the EAA reservoir project and may proceed with the implementation of CEPP project components in accordance with the final project implementation report.

(6) OPTION AGREEMENT.—The district must terminate the option agreement at the request of the seller if:

(a) The post-authorization change report receives congressional approval; or

(b) The district certifies to the board, the President of the Senate, and the Speaker of the House of Representatives that the acquisition of the land necessary for the EAA reservoir project, as provided in subsection (4), has been completed.

(7) PROJECT IMPLEMENTATION REPORT.—

(a) If, for any reason, the post-authorization change report is not approved by the corps and submitted for congressional approval by October 1, 2018, or the post-authorization change report has not received congressional approval by December 31, 2019, the district, unless granted an extension by the Legislature, must request the corps to initiate a project implementation report, as defined in s. 373.470, for the EAA reservoir project and the district may proceed with the implementation of CEPP project components in accordance with the final project implementation report.

(b) The district, when developing the project implementation report, must focus on the goals of the EAA reservoir project as identified in CERP, which include providing additional water storage and conveyance south of the lake to reduce the volume of regulatory discharges of water from the lake to the east and west.

(c) Upon finalization of the project implementation report, as defined in s. 373.470, the district, in coordination with the corps, shall seek congressional authorization for the EAA reservoir project.

(8) AGRICULTURAL WORKERS.—The district shall give preferential consideration to the hiring of former agricultural workers primarily employed during 36 of the past 60 months in the Everglades Agricultural Area, consistent with their qualifications and abilities, for the construction and operation of the EAA reservoir project. Any contract or subcontract for the construction and operation of the EAA reservoir project in which 50 percent or more of the cost is paid from state-appropriated funds must provide preference and priority in the hiring of such agricultural workers. The district shall give preferential consideration to contract proposals that include in the contractor's hiring practices training programs for such workers.

(9) C-51 RESERVOIR PROJECT.—

(a) The C-51 reservoir project is a water storage facility as defined in s. 373.475. The C-51 reservoir project is located in western Palm Beach County south of the lake and consists of in-ground reservoirs and conveyance structures that will provide water supply and water management benefits to participating water supply utilities and will also provide environmental benefits by reducing freshwater discharges to tide and making water available for natural systems.

(b) Phase I of the project will provide approximately 14,000 acre-feet of water storage and will hydraulically connect to the district's L-8 Flow Equalization Basin. Phase II of the project will provide approximately 46,000 acre-feet of water storage, for a total increase of 60,000 acre-feet of water storage.

(c) The district may negotiate with the owners of the C-51 reservoir project site for the acquisition of any portion of the project not already committed to utilities for alternative water supply purposes or to enter into a public-private partnership. The district may acquire land near the C-51 reservoir through the purchase or exchange of land that is owned by the district or the state as necessary to implement the project. The state and the district may consider potential swaps of land that is owned by the state or the district to achieve an optimal combination of water quality

and water storage. The district may not exercise eminent domain for the purpose of implementing the C-51 reservoir project.

(d) If state funds are appropriated for the C-51 reservoir project:

1. The district, to the extent practicable, must operate the reservoir project to maximize the reduction of high-volume Lake Okeechobee regulatory releases to the St. Lucie or Caloosahatchee estuaries, in addition to maximizing the reduction of harmful discharges to the Lake Worth Lagoon. However, the operation of Phase I of the C-51 reservoir project must be in accordance with any operation and maintenance agreement approved by the district;

2. In addition to any permitted amounts for water supply, water made available by the reservoir project must be used for natural systems; and

3. Water received from Lake Okeechobee may be available to support consumptive use permits only if such use is in accordance with district rules.

(e) Phase I of the C-51 reservoir project may be funded by appropriation or through the water storage facility revolving loan fund as provided in s. 373.475. Phase II of the C-51 reservoir project may be funded by appropriation, pursuant to this section, pursuant to s. 373.475, as a project component of CERP, or pursuant to s. 375.041(3)(b)4.

(10) FUNDING.—

(a) The Legislature determines that the authorization and issuance of Florida Forever bonds for the purposes of this section is in the best interest of the state and determines that water storage reservoir projects should be implemented.

(b) Any cost related to this section, including, but not limited to, the costs for land acquisition, planning, and construction may be funded using proceeds from Florida Forever bonds issued under s. 215.618, in an amount of up to $800 million, as authorized under that section. The bond proceeds from bonds issued for the purposes of this section shall be deposited into the Everglades Trust Fund.

(c) Notwithstanding s. 373.026(8)(b) or any other provision of law, the use of state funds is authorized for the EAA reservoir project.

(d) The district shall actively seek additional sources of funding, including federal funding, for the reservoir project.

(11) LAKE OKEECHOBEE REGULATION SCHEDULE.—The district shall request that the corps pursue the reevaluation of the Lake Okeechobee Regulation Schedule as expeditiously as possible, taking into consideration the repairs made to the Herbert Hoover Dike and implementation of projects designed to reduce high-volume freshwater discharges from the lake, in order to optimally utilize the added water storage capacity to reduce the high-volume freshwater discharges to the St. Lucie and Caloosahatchee estuaries.

History.—ss. 3, 9, ch. 2017-10; s. 1, ch. 2019-68.

373.461 Lake Apopka improvement and management.—

(1) FINDINGS AND INTENT.—

(a) The Legislature has expressed its intent that economically and technically feasible methods be developed to restore the Lake Apopka Basin through the Lake Apopka Restoration Act and the Surface Water Improvement and Management Act. It is the Legislature's intent to enhance and accelerate the restoration process begun by those previous acts of the Legislature.

(b) Technical studies have determined that substantial reductions in or elimination of phosphorus in farm discharges to Lake Apopka will be necessary in order to improve water quality and restore the lake to Class III standards.

(c) Acquisition of the lands in agricultural production which discharge phosphorus to Lake Apopka, and their related facilities, would serve the public interest by eliminating the impacts of introduction of phosphorus from these sources into the lake. It is the Legislature's intent that a fair and equitable program of acquisition of the lands necessary to achieve the purposes of this section be implemented.

(d) The Legislature finds that time is of the essence and that a complete purchase of properties described in this section should be accomplished in an accelerated and economical manner.

(e) It is the Legislature's intent to provide a process for development of phosphorus discharge limitations that will bring such discharges into compliance with state water quality standards and to provide for interim phosphorus abatement measures designed to further reduce phosphorus discharges from the Zellwood Drainage and Water Control District, which is the largest agricultural entity within the Lake Apopka Basin, unless both of the timeframes specified in paragraph (4)(a) regarding purchase agreements and completion of purchases are met. The Legislature finds that it is in the public interest to jointly share in the cost of implementing such interim phosphorus reduction measures with Zellwood.

(f) A. Duda and Sons, Inc., has implemented phosphorus treatment and has worked cooperatively with the district to meet applicable water quality standards. An existing settlement agreement outlines treatment measures that should satisfy all discharge limitations and criteria.

(2) DEFINITIONS.—As used in this section:

(a) "District" means the St. Johns River Water Management District.

(b) "Phosphorus criterion" means a numeric interpretation for phosphorus of the Class III narrative nutrient criterion.

(c) "Stormwater management system" has the meaning set forth in s. 373.403(10).

(d) "Zellwood" means the Zellwood Drainage and Water Control District as it is described in chapter 20715, Laws of Florida.

(3) PHOSPHORUS CRITERION AND DISCHARGE LIMITATIONS FOR LAKE APOPKA.—

(a) In the event the district does not adopt a rule establishing a phosphorus criterion for Lake Apopka by January 1997, the phosphorus criterion for the lake shall be 55 parts per billion (ppb).

(b) The district shall adopt by rule discharge limitations for all permits issued by the district for discharges into Lake Apopka, the Lake Level Canal, and the McDonald Canal.

(4) CONSTRUCTION OF STORMWATER MANAGEMENT SYSTEMS.—

(a) It is the intent of the Legislature that construction of stormwater management facilities to store, treat, and recycle Zellwood's agricultural stormwater runoff will be necessary during the interim period while discharge limitations are being established for Lake Apopka, unless both of the following conditions are met:

1. Agreements to purchase all the lands within Zellwood are executed by September 30, 1997, or a later execution deadline established by the United States for such agreements before reallocation of Commodity Credit Corporation funds made available to acquire wetland reserve program conservation easements within the Lake Apopka Partnership Project area; and

2. All such purchases are completed pursuant to the terms of such agreements.

The Legislature finds that it is in the public interest for state, regional, and local revenue sources to be used along with Zellwood's revenue sources to finance the costs of acquiring land and constructing such facilities. One-third of the cost of the facilities shall be contributed by Zellwood, one-third by the state, and one-third by the district.

(b) Consistent with the funding formula outlined in paragraph (a), the state will provide up to $2 million, with the same amount being committed by both Zellwood and the district, for a total of $6 million. These funds shall be used for the purpose of acquiring the necessary land for and constructing a stormwater management facility, not to exceed 600 acres in total size, for Zellwood's farm runoff, together with the necessary pumps and other infrastructure associated with such facilities, provided that Zellwood's contribution shall be used for project purposes other than acquiring land.

(c) The district shall be responsible for design of the facilities and for acquiring any necessary interest in land for the facilities. Zellwood will be responsible for construction of the facilities in accordance with the district's design. The district will administer the funds provided for under this section. No later than September 30, 1997, the district and Zellwood will develop an agreement regarding dispersal of funds for construction of the facilities which shall take into account the financing mechanisms available to the parties. Zellwood shall not be required to assess more than $25 per acre per year in financing its share of the stormwater management facility. However, it must provide its one-third

share of the funding within the timeframes outlined for construction of the stormwater construction facility outlined in this section.

(d) Construction of the stormwater retention and treatment facilities provided for in this section shall begin within 90 days after acquisition of interests in land necessary for the facilities and the district's delivery of the design of the facilities to Zellwood, and shall be completed within 1 year thereafter. After completion of the facilities, Zellwood shall be responsible for operation and maintenance so long as the facilities are used by Zellwood.

(e) The district may, as appropriate, alter or modify the design of the facility to reduce the cost of the acquisition and construction of the facility if lands presently in production within Zellwood are acquired pursuant to subsection (5) before construction of the facility. The district shall have the flexibility to adjust these dates due to any unforeseen circumstances such as, and not limited to, acts of God, delays due to litigation by outside parties, or unnecessary or unforeseen permitting or construction delays.

(f) The district and Zellwood shall give preferential consideration to the hiring of agricultural workers displaced as a result of the Lake Apopka Restoration Act, consistent with their qualifications and abilities, for the construction and operation of the stormwater facility.

(5) PURCHASE OF AGRICULTURAL LANDS.—

(a) The Legislature finds that it is in the public interest of the state to acquire lands in agricultural production, along with their related facilities, which contribute, directly or indirectly, to phosphorus discharges to Lake Apopka, for the purpose of improving water quality in Lake Apopka. These lands consist of those farming entities on Lake Apopka having consent and settlement agreements with the district and those sand land farms discharging indirectly to Lake Apopka through Lake Level Canal, Apopka-Beauclair Canal, or McDonald Canal. The district is granted the power of eminent domain on those properties.

(b) In determining the fair market value of lands to be purchased from willing sellers, all appraisals of such lands may consider income from the use of the property for farming and, for this purpose, such income shall be deemed attributable to the real estate.

(c) The district shall explore the availability of funding from all sources, including any federal, state, regional, and local land acquisition funding programs, to purchase the agricultural lands described in paragraph (a). It is the Legislature's intent that, if such funding sources can be identified, acquisition of the lands described in paragraph (a) may be undertaken by the district to purchase these properties from willing sellers. However, the purchase price paid for acquisition of such lands that were in active cultivation during 1996 may not exceed the highest appraisal obtained by the district for these lands from a state-certified general appraiser following the standards of professional practice established by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal. This maximum purchase price limitation may not include, nor be applicable to, that portion of the purchase price attributable to consideration of income described in paragraph (b), or that portion attributable to related facilities, or closing costs.

(d) In connection with successful acquisition of any of the lands described in this section which are not needed for stormwater management facilities, the district shall give the seller the option to lease the land for a period not to exceed 5 years, at a fair market lease value for similar agricultural lands. Proceeds derived from such leases shall be used to offset the cost of acquiring the land.

(e) If all the lands within Zellwood are purchased in accordance with this section prior to expiration of the consent agreement between Zellwood and the district, Zellwood shall be reimbursed for any costs described in subsection (4).

(f)1. Tangible personal property acquired by the district as part of related facilities pursuant to this section, and classified as surplus by the district, shall be sold by the Department of Management Services. The Department of Management Services shall deposit the proceeds of such sale in the Economic Development Trust Fund in the Department of Economic Opportunity. The proceeds shall be used for the purpose of providing economic and infrastructure development in portions of northwestern Orange County and east central Lake County which will be adversely affected economically due to the acquisition of lands pursuant to this subsection.

2. The Department of Economic Opportunity shall, upon presentation of the appropriate documentation justifying expenditure of the funds deposited pursuant to this paragraph, pay any obligation for which it has sufficient funds from the proceeds of the sale of tangible personal property and which meets the limitations specified in paragraph (g).

The authority of the Department of Economic Opportunity to expend such funds shall expire 5 years from the effective date of this paragraph. Such expenditures may occur without future appropriation from the Legislature.

3. Funds deposited under this paragraph may not be used for any purpose other than those enumerated in paragraph (g).

(g)1. The proceeds of sale of tangible personal property authorized by paragraph (f) shall be distributed as follows: 60 percent to Orange County; 25 percent to the City of Apopka; and 15 percent to Lake County.

2. Such proceeds shall be used to implement the redevelopment plans adopted by the Orange County Board of County Commissioners, Apopka City Commission, and Lake County Board of County Commissioners.

3. Of the total proceeds, the Orange County Board of County Commissioners, Apopka City Commission, and Lake County Board of County Commissioners, may not expend more than:

a. Twenty percent for labor force training related to the redevelopment plan;

b. Thirty-three percent for financial or economic incentives for business location or expansion in the redevelopment area; and

c. Four percent for administration, planning, and marketing the redevelopment plan.

4. The Orange County Board of County Commissioners, Apopka City Commission, and Lake County Board of County Commissioners must spend those revenues not expended under subparagraph 3. for infrastructure needs necessary for the redevelopment plan.

(6) EXISTING CONSENT OR SETTLEMENT AGREEMENTS PRESERVED.—Except to the extent specifically modified in this section, the district's existing consent or settlement agreements with A. Duda and Sons, Inc., and Zellwood, including requirements regarding compliance with any discharge limitations established for Lake Apopka, shall remain in effect.

(7) APPLICABILITY OF LAWS AND WATER QUALITY STANDARDS; AUTHORITY OF DISTRICT AND DEPARTMENT.—Except as otherwise provided in this section, nothing in this section shall be construed:

(a) As altering any applicable state water quality standards, laws, or district or department rules; or

(b) To restrict the authority otherwise granted the department and the district pursuant to this chapter or chapter 403. The provisions of this section shall be deemed supplemental to the authority granted pursuant to this chapter and chapter 403.

History.—s. 1, ch. 96-207; s. 3, ch. 97-81; s. 5, ch. 2000-153; s. 52, ch. 2000-158; s. 1, ch. 2012-61; s. 57, ch. 2012-96.

373.462 Legislative findings and intent.—

(1) The Legislature recognizes that by law in 1979, portions of Lake and Polk Counties were designated as the Green Swamp Area of Critical State Concern in acknowledgment of its regional and statewide importance in maintaining the quality and quantity of Florida's water supply and water resources for the public and the environment.

(2) The Legislature also recognizes the Green Swamp, which encompasses approximately 560,000 acres, is located in a regionally significant high recharge area of the Floridan Aquifer system, and it helps protect coastal communities from saltwater intrusion.

(3) The Legislature finds that the Green Swamp or Polk County make up the headwaters or portions of the headwaters of six major river systems in the state, which are the Alafia, Hillsborough, Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers. In addition, due to the area's unique topography and geology which receives no other water inputs other than rainfall, the area is essential in maintaining the potentiometric head of the Floridan Aquifer system that directly influences the aquifer's productivity for water supply.

(4) The Legislature also finds that the Green Swamp and the surrounding areas are economically, environmentally, and socially defined by some of the most important and vulnerable water resources in the state.

(5) The Legislature recognizes that the Central Florida Water Initiative Guiding Document dated January 30, 2015, and the Southern Water Use Caution Area Recovery Strategy dated March 2006 recognized the fact that the surface water and groundwater resources in the heartland counties of Hardee, Highlands, and Polk are integral to the health, public safety, and economic future of those regions.

(6) The Legislature declares that there is an important state interest in partnering with regional water supply authorities and local governments, in accordance with s. 373.705, to protect the water resources of the headwaters of the Alafia, Hillsborough, Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers and the surrounding areas. The Legislature further declares that funding consideration be given to regional collaborative solutions, including, but not limited to, the heartland counties, to manage the water resources of the state.

History.—s. 2, ch. 2017-111.

373.463 Heartland headwaters annual report.—

(1) The Polk Regional Water Cooperative, in coordination with all of its member county and municipal governments, shall prepare a comprehensive annual report for water resource projects identified for state funding consideration within its members' jurisdictions. The report must include, at a minimum:

(a) A list of projects identified by the cooperative for state funding consideration for each of the following categories. A project may be listed in more than one category.

1. Drinking water supply.
2. Wastewater.
3. Stormwater and flood control.
4. Environmental restoration.
5. Conservation.

(b) A priority ranking for each listed project that will be ready to proceed in the upcoming fiscal year, identified by the categories specified in paragraph (a).

(c) The estimated cost of each listed project.

(d) The estimated completion date of each listed project.

(e) The source and amount of financial assistance to be provided by the cooperative, the member county or municipal governments, or other entities for each listed project.

(2) By December 1, 2017, and each year thereafter, the cooperative shall submit the comprehensive annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the department, and the appropriate water management districts.

(3) The cooperative shall also annually coordinate with the appropriate water management district to submit a status report on projects receiving priority state funding for inclusion in the consolidated water management district annual report required by s. 373.036(7).

History.—s. 3, ch. 2017-111.

373.468 The Harris Chain of Lakes restoration program.—

(1) The Fish and Wildlife Conservation Commission and the St. Johns River Water Management District, in conjunction with the Department of Environmental Protection and pertinent local governments, shall review existing restoration proposals to determine which ones are the most environmentally sound and economically feasible methods of improving the fish and wildlife habitat and natural systems of the Harris Chain of Lakes.

(2) To initiate the Harris Chain of Lakes restoration program, the Fish and Wildlife Conservation Commission, with assistance from the St. Johns River Water Management District and in consultation and by agreement with the Department of Environmental Protection and pertinent local governments, shall develop tasks to be undertaken by those entities for the enhancement of fish and wildlife habitat. These agencies shall evaluate different methodologies for removing the extensive tussocks and buildup of organic matter along the shoreline and of the aquatic vegetation in the lake.

(3) Contingent on the Legislature's appropriating funds for the Harris Chain of Lakes restoration program and in conjunction with financial participation by federal, other state, and local governments, the appropriate agencies shall, through competitive bid, award contracts to implement the activities of the Harris Chain of Lakes restoration program.

(4) The Fish and Wildlife Conservation Commission is authorized to conduct a demonstration restoration project on the Harris Chain of Lakes for the purpose of creating better habitat for fish and wildlife.

History.—ss. 2, 3, ch. 2001-246; s. 2, ch. 2020-52.

PART V
FINANCE AND TAXATION

373.470 Everglades restoration.—

(1) SHORT TITLE.—This section may be cited as the "Everglades Restoration Investment Act."

(2) DEFINITIONS.—As used in this section, the term:

(a) "Caloosahatchee River Watershed Protection Plan" means the plan developed pursuant to s. 373.4595.

(b) "Comprehensive plan" means the recommended comprehensive plan contained within the "Final Integrated Feasibility Report and Programmatic Environmental Impact Statement, April 1999" and submitted to Congress on July 1, 1999.

(c) "Corps" means the United States Army Corps of Engineers.

(d) "District" means the South Florida Water Management District.

(e) "Keys Wastewater Plan" means the plan prepared by the Monroe County Engineering Division dated November 2007 and submitted to the Florida House of Representatives on December 4, 2007.

(f) "Lake Okeechobee Watershed Protection Plan" means the plan developed pursuant to ss. 373.4595(3)(a) and 373.451-373.459.

(g) "Project" means the Central and Southern Florida Project authorized under the heading "CENTRAL AND SOUTHERN FLORIDA" in s. 203 of the Flood Control Act of 1948 (62 Stat. 1176), and any modification to the project authorized by law.

(h) "Project component" means any structural or operational change, resulting from the comprehensive plan, to the project as it existed and was operated as of January 1, 1999.

Chapter 62-330, F.A.C.
Environmental Resource Permitting

62-330.010 Purpose and Implementation.

(1) This chapter, together with the rules and all documents it incorporates by reference, implements the comprehensive, statewide environmental resource permit (ERP) program under section 373.4131, F.S.

(2) The ERP program governs the following: construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on or over wetlands or other surface waters, as defined and delineated in chapter 62-340, F.A.C.) (any one or a combination of these may be collectively referred to throughout this chapter as "projects" or "systems").

(3) The responsibilities for implementing this chapter are described in Operating and Delegation Agreements between the Department of Environmental Protection ("Department"), the water management districts ("Districts"), and local governments ("delegated local governments"). The Agreements are incorporated by reference in rule 62-113.100, F.A.C. The term "Agency" applies to the Department, a District, or a delegated local government, as applicable, throughout this chapter.

(4) This chapter is used in conjunction with an Applicant's Handbook, in two volumes, as follows:

(a) Applicant's Handbook Volume I, "General and Environmental" (hereinafter "Volume I"), applies statewide to all activities regulated under Chapter 62-330, F.A.C. It includes explanations, procedures, guidance, standards, and criteria on what is regulated by this chapter, the types of permits available, how to submit an application or notice for a regulated activity to the Agencies, how applications and notices are reviewed, the standards and criteria for issuance, and permit duration and modification. Volume I, including Appendices G, H, and I only, is incorporated by reference herein, (effective date ~~June 1 ,2018~~) (https://www.flrules.org/Gateway/reference.asp?No=Ref-12078).

(b) An Applicant's Handbook Volume II (hereinafter "Volume II"), has been adopted for use within each District. Each District's Volume II is incorporated by reference herein and in the rules listed below, which also are incorporated by reference herein. These rules and Handbook Volumes are available as provided in subsection (5), below.

1. Northwest Florida Water Management District – "Department of Environmental Protection and Northwest Florida Water Management District Environmental Resource Permit Applicant's Handbook – Volume II (Design and Performance Standards Including Basin Design and Criteria)," including all appendices, is incorporated by reference herein (June 1, 2018) (http://www.flrules.org/Gateway/reference.asp?No=Ref-09392 and http://www.flrules.org/Gateway/reference.asp?No=Ref-03173) or from the Agency as provided in subsection (5).

2. Suwannee River Water Management District, Applicant's Handbook Volume II, is incorporated by reference herein, (August, 2013) (http://www.flrules.org/Gateway/reference.asp?No=Ref-09398), and in subsection 40B-400.091(2), F.A.C., (October 14, 2013) (https://www.flrules.org/Gateway/reference.asp?No=Ref-02523).

3. St. Johns River Water Management District, Applicant's Handbook Volume II, is incorporated by reference herein, (June 1, 2018) (http://www.flrules.org/Gateway/reference.asp?No=Ref-09405), and in subsections 40C-4.091(1) (June 1, 2018) (https://www.flrules.org/Gateway/reference.asp?No=Ref-09411), and 40C-44.091(1), F.A.C., (June 1, 2018) (https://www.flrules.org/Gateway/reference.asp?No=Ref-09410).

4. Southwest Florida Water Management District, Applicant's Handbook Volume II, is incorporated by reference herein, (June 1, 2018~~October 1, 2013~~) (https://www.flrules.org/Gateway/reference.asp?No=Ref-12079), and in Rule 40D-1.660~~40D-4.091, F.A.C.~~, (June 1, 2018~~October 1, 2013~~) (https://www.flrules.org/Gateway/reference.asp?No=Ref-12080).

5. South Florida Water Management District, Applicant's Handbook Volume II, including Appendices A through D, is incorporated by reference herein, (May 22, 2016~~October 1, 2013~~) (https://www.flrules.org/Gateway/reference.asp?No=Ref-12081).

A copy of the incorporated material identified above may be obtained from the Agency Internet site, https://floridadep.gov/water/water/content/water-resource-management-rules#ERP, or as described in subsection 62-330.010(5), F.A.C.

(5) A copy of Volumes I and II and the other Agreements, rules, forms, and other documents incorporated by reference in this chapter also may be obtained from the Agency Internet site or by contacting staff in an Agency office identified in Appendix A of Volume I.

(6) This chapter explains how to submit notices and applications for activities regulated under part IV of chapter 373, F.S., and provides the standards for Agency review and action, which must not be harmful to the water resources and not be inconsistent with the overall objectives of the Agency. This chapter also includes procedures for petitions for a formal determination of the landward extent of wetlands and surface waters under chapter 62-340, F.A.C.

Rulemaking Authority 373.026(7), 373.043, 373.118, 373.418, 373.4131, 373.4145, 403.805(1) FS. Law Implemented 373.409, 373.413, 373.4131, 373.414(9), 373.4141, 373.4142, 373.4145, 373.416, 373.423, 373.426, 373.428, 373.429, 373.441 FS. History–New 10-1-13, Amended 6-1-18, _____.

62-330.050 Procedures for Review and Agency Action on Exemption Requests.

(1) A notice to the Agency is not required to conduct an activity that is exempt under rule 62-330.051, F.A.C., except where required in a specific exemption. Persons are encouraged, but not required, to use any available electronic self-certification service of the Agency to confirm that the activity meets the exemption.

(2) If a person desires Agency verification of qualification to conduct an exempt activity (other than for silviculture, for which the procedures in Rule 62-330.0511, F.A.C., apply), and a self-certification is not available or the person chooses not to use a self-certification, they may submit a written or electronic Form 62-330.050(1) – "Request for Verification of an Exemption," (effective date ~~June 1, 2018~~), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12035), or a letter that clearly requests an exemption verification. A copy of the form may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C. Such request must include:

(a) The processing fee prescribed in rule 62-330.071, F.A.C. Only one exemption verification processing fee shall be assessed if the request contains multiple exempt activity types on a single parcel;

(b) A location map(s) of sufficient detail to allow someone who is unfamiliar with the area to locate the site of the activity;

(c) Drawings, calculations, and other supporting information to clearly depict and describe the proposed activities;

(d) The tax parcel identification number from the local government tax rolls;

(e) Contact information for the person requesting the verification; and,

(f) Authorization signed by the property owner allowing Agency staff to inspect the location of the proposed activities.

(3) Additional information on completing and submitting a request for verification of an exemption is contained in sections 3.2, 4.2, 4.2.1, 4.3, and 4.4 of Volume I.

(4) The Agency shall take reasonable efforts to determine within 30 days of receipt of a request whether the submitted materials demonstrate the activity qualifies for an exemption or, if they do not, what information would enable the Agency to make such a determination. If those materials are not received within 60 days of the Agency's

request, the Agency shall advise the person that it cannot verify that the activity qualifies for an exemption. The materials submitted and responses received shall not be considered an application for a general, conceptual approval, or individual permit unless requested in writing.

(5) If, after receipt of an application for a permit, the Agency determines the proposed activity qualifies in whole for an exemption under this chapter, the Agency shall make such determination within 30 days of receipt of the application and refund any processing fees received in excess of those required under rule 62-330.071, F.A.C.

(6) The Agency will consider exempt activities included in an application to conduct other activities as part of an entire application requiring a permit, and will review and act upon the entire application at one time. However, an applicant may request the Agency separately determine whether specific activities that are part of the application qualify for an exemption. In such a case, the applicant shall pay an additional processing fee for the exemption verification, but only one additional exemption verification processing fee will be required even if more than one kind of exempt activity is included. In accordance with section 10.27(d) of Volume I, the Agency with consider the secondary impacts arising from activities described in section 403.813(1), F.S., that are very closely linked and causally related to the activities proposed in the application.

(7) The Agency's determination of qualification for an exemption is subject to chapter 120, F.S. Self-certification is not an Agency action subject to chapter 120, F.S., unless the Agency determines the self-certification does not meet all of its applicable terms and conditions.

(8) Activities conducted in accordance with an exemption under this chapter remain subject to other applicable permitting, authorization, and performance requirements (including, but not limited to, those governing the "take" of listed species) of the Agencies, the Board of Trustees, and other federal, state, and local government entities.

(9) The following apply when specified in an exemption in rule 62-330.051, F.A.C.:

(a) Activities shall not exceed a permitting threshold in section 1.2 of the applicable Volume II;

(b) Construction, alteration, and operation shall not:

1. Adversely impound or obstruct existing water flow, cause adverse impacts to existing surface water storage and conveyance capabilities, or otherwise cause adverse water quantity or flooding impacts to receiving water and adjacent lands;

2. Cause an adverse impact to the minimum flows and levels established pursuant to section 373.042, F.S.;

3. Cause adverse impacts to a Work of the District established pursuant to section 373.086, F.S.;

4. Adversely impede navigation or create a navigational hazard;

5. Cause or contribute to a violation of state water quality standards. Turbidity, sedimentation, and erosion shall be controlled during and after construction to prevent violations of state water quality standards, including any antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3) and rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters due to construction-related activities. Erosion and sediment control best management practices shall be installed and maintained in accordance with the guidelines and specifications described in the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual* (Florida Department of Transportation and Florida Department of Environmental Protection, June 2007), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-02530), and the *Florida Stormwater Erosion and Sedimentation Control Inspector's Manual* (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-02531); nor

6. Allow excavated or dredged material to be placed in a location other than a self-contained upland disposal site, except as expressly allowed in an exemption in rule 62-330.051, F.A.C.

(c) When performed in waters accessible to federally- or state-listed aquatic species, such as manatees, marine turtles, smalltooth sawfish, and Gulf sturgeon, all in-water work shall comply with the following:

1. All vessels associated with the project shall operate at "Idle Speed/No Wake" at all times while in the work area and where the draft of the vessels provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.

2. All deployed siltation or turbidity barriers shall be properly secured, monitored, and maintained to prevent entanglement or entrapment of listed species.

3. All in-water activities, including vessel operation, must be shut down if a listed species comes within 50 feet of the work area. Activities shall not resume until the animal(s) has moved beyond a 50-foot radius of the in-water work, or until 30 minutes elapses since the last sighting within 50 feet. Animals must not be herded away or harassed into leaving. All onsite project personnel are responsible for observing water-related activities for the presence of listed species.

4. Any listed species that is killed or injured by work associated with activities performed shall be reported

immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1(888)404-3922 and ImperiledSpecies@myFWC.com.

Copies of incorporated materials identified above may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C.

(10) A person requesting verification of an exemption may waive the timeframes in subsections (4) and (5), above, if the project also requires a State 404 Program authorization under Chapter 62-331, F.A.C., that must be reviewed using the timeframes in that chapter. Waiving the timeframes allows the Agency(ies) to issue agency action for the verification of exemption and the State 404 Program authorization at the same time. This is strongly recommended by the Agencies to ensure consistency and to reduce the potential need for project modifications to resolve inconsistencies that may occur when the agency actions are issued at different times.

Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.4145, 403.805(1) FS. Law Implemented 373.109, 373.406, 373.4131, 373.4145, 403.813(1), 668.003, 668.004, 668.50 FS. History–New 10-1-13, Amended 6-1-18,_____.

62-330.060 Content of Applications for Individual and Conceptual Approval Permits.

Materials to include in an application or notice for a permit are described below. Applicants are encouraged to have a pre-application meeting or discussion with Agency staff prior to submitting the application or notice.

(1) An application for an individual permit or conceptual approval permit shall be made on Form 62-330.060(1), "Application for Individual and Conceptual Approval Environmental Resource Permit, State 404 Program Permit, and Authorization to Use State-Owned Submerged Lands,", including the information required in the applicable Sections A through I ~~H~~ (effective date), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12036), a copy of which may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C., or by use of the equivalent e-application form of the applicable Agency. Attachments 1, 2, and 3 of the form (containing agency contacts and a summary of the application fees related to applications and notices) are not incorporated by reference, but are available at https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/forms-environmental-resource.

(2) The application must include all material requested in the application form; the processing fee in accordance with rule 62-330.071, F.A.C.; and other information needed to provide reasonable assurance that the proposed

activities meet the conditions for issuance in rule 62-330.301, F.A.C., the additional conditions for issuance in rule 62-330.302, F.A.C., and the Applicant's Handbook.

(3) The applicant must certify that it has sufficient real property interest over the land upon which the activities subject to the application will be conducted, as required in Section A of Form 62-330.060(1) and Section 4.2.3(d) of the Applicant's Handbook Volume I. The applicant or the applicant's authorized agent must sign Part 4.A. of the application, and the applicant must sign Part 4.B. If the applicant's authorized agent signs Part 4.A, the applicant also must sign Part 4.C.

(4) An application for an individual permit also constitutes an application to operate and maintain the project. The application must specify the entity that will operate and maintain the project. If the applicant proposes an entity other than the current owner to operate and maintain the proposed project, documentation must be included demonstrating how such entity will meet the requirements of sections 12.3 through 12.3.4 of Volume I. A homeowner's or property owner's association ("HOA" or "POA," respectively) draft association documents designating the HOA or POA as the operating entity, and prepared in conformance with sections 12.3 through 12.3.4 of Volume I, shall satisfy this requirement. This provision of the association documents may not be modified without a permit modification in accordance with rule 62-330.315, F.A.C.

Rulemaking Authority 373.044, 373.113, 373.171, 373.4131 FS. Law Implemented 373.042, 373.413, 373.4131, 373.416, 668.003, 668.004, 668.50 FS. History–New 10-1-13, Amended 6-1-18,_____.

62-330.090 Processing of Individual and Conceptual Approval Permit Applications.

(1) The Agency shall review, notice, and issue a request for any required additional information in accordance with section 5.5.3 of Volume I.

(2) Pending applications shall be exempt from changes in the rules adopted after an application has been deemed complete except as otherwise provided by law or in this chapter.

(3) If an applicant submits a processing fee in excess of the required fee, the Agency shall begin processing the application and shall refund to the applicant the amount received in excess of the required fee. If an applicant fails to provide the complete processing fee, the Agency will inform the applicant of the amount of additional fee required, and the application will not be complete until the complete processing fee is received, along with the other materials that have been timely requested in accordance with section 5.5.3 of Volume I. The Agency cannot be compelled to

issue a permit in advance of receipt of the required fee or any other material required by the Agency to deem an application complete.

(4) If a substantial revision is submitted to a pending application, other than revisions proposed to reduce adverse impacts identified by the Agency, the applicant shall pay the difference between the processing fees already submitted and any additional fees required for the revised application under rule 62-330.071, F.A.C. In such a case, the time frames in section 5.5.3 of Volume I for processing the application shall be restarted.

(5) In addition to the procedures in this section, processing of the application will be performed in accordance with sections 5.5 through 5.6 of Volume I.

(6) A permit shall only be issued to an entity meeting the requirements of section 4.2.3(d) of Volume I.

(7) The Agency shall cause a "Recorded Notice of Environmental Resource Permit" Form No. 62-330.090(1), (June 1, 2018), incorporated by reference herein (http://www.flrules.org/Gateway/reference.asp?No=Ref-09362), a copy of which may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C., to be recorded in the public records of the county where the property is located unless otherwise noted in the permit. This notice shall not be considered an encumbrance upon the property. Such notice need not be recorded when the entire activity:

(a) Is for an individual, single-family residence, duplex, triplex, or quadruplex that is not part of a larger common plan of development or sale proposed by the permittee, except when the permit specifies that recording is necessary to ensure future owners are advised of long-term operational and maintenance requirements, or conservation provisions;

(b) Is authorized by a general permit under this chapter;

(c) Is temporary (not to exceed one year) in nature;

(d) Has no long term maintenance or operation requirements associated with it;

(e) Is located within lands encumbered by a real property interest held by a federal, state, county, or municipal government entity, including a school, university, or college;

(f) Is a utility within an easement recorded in the official records; or

(g) Is within the permit area of an existing permit for which a Notice has already been recorded, and the permit modification does not change the permit area.

(8) An applicant may waive the timeframes in section 5.5.4 of Volume I if the project also requires a State 404 Program authorization under Chapter 62-331, F.A.C., that must be reviewed using the timeframes in that chapter.

Waiving the timeframes allows the Agency(ies) to issue agency action for both authorizations at the same time. This is strongly recommended by the Agencies to ensure consistency between the authorizations and to reduce the potential need for project modifications to resolve inconsistencies that may occur when the agency actions are issued at different times.

Rulemaking Authority 373.026(7), 373.043, 373.116, 373.118, 373.413, 373.4131, 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.109, 373.118, 373.4131, 373.4141, 373.4145 FS. History–New 10-1-13, Amended 6-1-18, _____.

62-330.201 ~~Formal~~ Determinations of the Landward Extent of Wetlands and Other Surface Waters.

(1) For any application that requires a determination or assessment of the landward extent of wetlands and other surface waters pursuant to section 7.1 of Volume I, Agency staff shall use Form 62-330.201(1), "Chapter 62-340, F.A.C., Data Form", (effective date), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12037), as described in Volume I section 7.1.1, to document verification of determinations of the landward extent of wetlands and other surface waters for formal determinations and for applications for individual and conceptual approval permits. The "Chapter 62-340, F.A.C., Data Form Guide" in Appendix J of Volume I, and the "Chapter 62-340, F.A.C., Data Form Instructions" in Appendix K of Volume I, is available to assist staff in completion of the form, and to assist other environmental professionals in performing delineations.

(a) For the delineation of the landward extent of wetlands and other surface waters, at least one data point along the delineation boundary shall be verified and documented by the Agency during the visual site inspection pursuant to Chapter 62-340.100(1) F.A.C. A delineation data point will be documented for each homogenous boundary within the site inspection area. One delineation data point representative of homogeneous boundaries found in other locations throughout the site is sufficient for documentation. Documentation of a delineation data point shall include two data forms; one representative of the waterward area adjacent to the data point, the other representative of the landward or upland area adjacent to the data point. The two complete data forms at a delineation data point will document failure or satisfaction of all methodology criteria pursuant to Chapter 62-340 F.A.C., and changes in evidence used to determine the boundary delineation at that point.

(b) For identification or conclusions regarding the absence or presence of a non-wetland surface water, wetland, or upland classification by the Agency within the site inspection area, at least one data point within homogenous areas of classification shall be verified and documented by the Agency during the visual site inspection pursuant to Chapter 62-340.100(1), F.A.C. One data point representative of homogeneous areas found in other locations throughout the site is sufficient for documentation. Documentation of an identification data point shall include one data form representative of the area of classification. The data form at an identification data point will document failure or satisfaction of all methodology criteria pursuant to Chapter 62-340, F.A.C., and evidence used to determine the upland, wetland, or non-wetland surface water classification.

(2) ~~(1)~~ Formal determinations.

(a) A real property owner, an entity having a contract to purchase real property, an entity having the power of eminent domain, or any other person who has legal or equitable interest in real property, may petition the Agency for a formal determination of the landward extent of wetlands and other surface waters for that property pursuant to Section 373.421(2), F.S. A formal determination means the Agency will make a binding determination of the landward extent (boundaries) of wetlands and other surface waters as defined by Chapter 62-340, F.A.C. A formal determination is binding on the real property for which that determination is sought for as long as the determination is valid, in accordance with Sections 373.421(2) and (3), F.S. If the petitioner is not the owner of the land, the petitioner must provide the Agency with information sufficient to contact the current owner, and the Agency shall provide notice of receipt of the petition to the landowner.

(b) ~~(2)~~ Procedures for the submittal, review, noticing, and action on a petition for a formal determination are contained in sections 7.2 through 7.2.7 of Volume I. The petition shall be submitted using Form 62-330.201(2~~1~~), "Petition for a Formal Determination of the Landward Extent of Wetlands and Other Surface Waters," (effective date ~~June 1, 2018~~), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12038). It shall be submitted with the fee prescribed in Rule 62-330.071, F.A.C.

Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.421(2), 403.0877 FS. Law Implemented 120.54(5)(a), 373.026, 373.4131, 373.421(2), 373.441 FS. History–New 7-4-95, Amended 8-14-96, 8-16-98, 2-19-03, Formerly 62-343.040, Amended 10-1-13, 6-1-18,_____.

62-330.340 Transfer of Permit Upon Change in Ownership or Control.

(1) Permits in the Operation and Maintenance Phase – Projects constructed in accordance with the terms and conditions of a general permit are automatically authorized to be operated and maintained by the permittee and subsequent owners. A permittee with a valid individual permit in the operation and maintenance phase under this chapter or chapter 62-342, F.A.C., shall notify the Agency electronically or in writing within 30 days of a change in ownership or control of the entire real property, project, or activity covered by the permit. A processing fee is not required for this notice. The permit shall automatically transfer to the new owner or person in control, except in cases of abandonment, revocation, or modification of a permit as provided in sections 373.426 and 373.429, F.S. If a permittee fails to provide written notice to the Agency within 30 days of the change in ownership or control, or if the change does not include the entire real property or activity covered by the permit, then the transfer shall be governed by subsections (2) through (4), below.

(2) Except as provided in subsection (1), above, and in section 6.3.1 of Volume I, or as otherwise required in an individual or conceptual approval permit, or for activities authorized under a general permit, a permittee shall notify the Agency electronically or in writing within 30 days of any change in ownership or control of any portion of the real property upon which an activity is permitted under this chapter or chapter 62-342, F.A.C. A person who obtains an interest in or control of such real property shall:

(a) Request transfer of the permit to become the new permittee or modification of the permit to become a co-permittee; or

(b) Provide written documentation of the following:

1. Certification that the permittee continues to retain sufficient real property interest over the land upon which the activities subject to the permit will be conducted as described in section 4.2.3(d) of Volume I; and

2. Authorization for Agency staff with proper identification to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit. (3) The person requesting transfer of the permit shall submit to the Agency a completed Form 62-330.340(1), "Request to Transfer Environmental Resource and/or State 404 Program Permit," incorporated by reference herein (effective date ~~June 1, 2018~~) (https://www.flrules.org/Gateway/reference.asp?No=Ref-12039), a copy of which may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C., together with the permit modification fee prescribed by

the Agency as set forth in Rule 62-330.071, FA.C. A proposed new permittee shall demonstrate that it has sufficient real property interest in or control over the land consistent with subsection 62-330.060(3), F.A.C.

(a) The Request to Transfer Environmental Resource and/or State 404 Program Permit shall be processed in the same manner as a minor modification as provided in subsection 62-330.315(2), F.A.C.

(b) The proposed new permittee shall include demonstration or documentation with the request that it meets the requirements for being an acceptable operation and maintenance entity provided in subsections 62-330.310(2), and (3), F.A.C., if applicable.

(4) Upon receipt of the completed Request to Transfer Environmental Resource and/or State 404 Program Permit form and applicable processing fee, the Agency shall approve the permit transfer unless it determines that the proposed permittee or co-permittee has failed to provide reasonable assurances that it qualifies to be a permittee or that it can meet the permit conditions.

(a) If the Agency proposes to deny the transfer, it shall provide both the current permittee and the proposed permittee with notice of proposed agency action of denial, and of the right to request an administrative hearing pursuant to chapter 120, F.S.

(b) Failure of the permittee to notify the Agency in writing within 30 days of a change in ownership or control shall not, by itself, render a permit invalid. When it does not appear the current permittee has met the requirements of subsection (2), above, or has not otherwise approved or been made aware of the request to transfer the permit, upon transfer of the permit to the new permittee, the Agency will provide notice to the former permittee, at its last known address, advising of the permit transfer, together with a notice of rights under chapter 120, F.S.

(5) A permittee from whom the permit is transferred shall:

(a) Be jointly and severally liable with the new owner or permittee for compliance with the permit and for any corrective actions that may be required as a result of violations of the permit or Agency rule on the property prior to permit transfer; and

(b) Remain jointly and severally liable for any corrective actions that are required as a result of any violations of the permit that occurred prior to the change in ownership or control of the property upon which the permitted project or activity is located.

(6) Upon transfer of a permit, the new permittee shall comply with all terms and conditions of the permit.

Rulemaking Authority 373.026(7), 373.043, 373.118, 373.4131, 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.118, 373.109, 373.413, 373.4131, 373.4142, 373.4145, 373.416, 373.426, 373.429, 668.003, 668.004, 668.50 FS. History–New 10-1-13, Amended 6-1-18,_____.

62-330.402 Submittal and Processing of General Permits.

(1) A person wishing to construct, operate, maintain, alter, abandon, or remove projects under a general permit shall provide notice using Form 62-330.402(1), "Notice of Intent to Use an Environmental Resource and/or State 404 Program General Permit," (effective date ~~June 1, 2018~~), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12040), a copy of which may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C. The notice must be received by the applicable Agency at least 30 days prior to initiating the activities authorized by the general permit, or at such other time as specified in the general permit. Notices for general permits that identify the reviewing agency as the Department shall be submitted to the Department instead of a District.

(2) The notice for a general permit must include the processing fee prescribed in rule 62-330.071, F.A.C. If a single notice includes more than one general permit, a separate fee shall be required for each general permit.

(3) The specific procedures of a general permit shall govern if they differ from the procedures in this rule.

(4)(a) Within 30 days of receiving Form 62-330.402(1), the Agency shall determine whether the activity qualifies for a general permit. If the activity does not qualify or the notice does not contain all the required information, the Agency will notify the person as provided in section 5.3.2 of Volume I.

(b) If the notice does not demonstrate that the requested activity qualifies for a general permit due to errors or omissions, the person shall have 60 days to amend the notice as provided in section 5.3.3 of Volume I. An additional processing fee will not be required if the person submits additional information demonstrating compliance with the general permit within that 60 days. Alternatively, the person may request that the submitted information be processed as an application for an individual permit, which must be supplemented with the information required in rule 62-330.060, F.A.C., and sections 4.2.3, 4.3, and 4.4 of Volume I, or the person may withdraw the notice for a general permit.

(c) If the activities do not qualify for a general permit, the processing fee submitted for the general permit shall be applied to the processing fee required for an individual permit, as provided in section 5.3.4 of Volume I. The

processing fee will not be returned if the person withdraws the notice or if qualification for the general permit is denied.

(5) The Agency will place notice of the proposed use of a general permit on the Agency website within 10 days of receipt of the request.

(6) At their discretion, persons qualifying for a general permit may publish a notice of qualification to use a general permit in a newspaper of general circulation in the affected area. The Agency will not publish, or require the person to publish, such notice.

(7) A person may waive the timeframes in subsection (4), above, if the project also requires a State 404 Program authorization under Chapter 62-331, F.A.C., that must be reviewed using the timeframes in that chapter. Waiving the timeframes allows the Agency(ies) to issue agency action for both authorizations at the same time. This is strongly recommended by the Agencies to ensure consistency between the authorizations and to reduce the potential need for project modifications to resolve inconsistencies that may occur when the agency actions are issued at different times.

Rulemaking Authority 373.044, 373.113, 373.118, 373.413, 373.4131 FS. Law Implemented 373.116(2), 373.118(3), 373.413, 373.4131, 373.416, 373.426, 668.003, 668.004, 668.50 FS. History–New 10-1-13, Amended 6-1-18, _____.

Chapter 62-340, F.A.C.
Delineation of the Landward Extent of Wetlands and Surface Waters

CHAPTER 62-340
DELINEATION OF THE LANDWARD EXTENT OF WETLANDS AND SURFACE WATERS

62-340.100 Intent.

(1) This rule's intent is to provide a unified statewide methodology for the delineation of the extent of wetlands and surface waters to satisfy the mandate of Section 373.421, F.S. This delineation methodology is intended to approximate the combined landward extent of wetlands as determined by a water management district and the Department immediately before the effective date of this rule. Before implementing the specific provisions of this methodology, the regulating agency shall attempt to identify wetlands according to the definition for wetlands in Section 373.019(25), F.S., and subsection 62-340.200(19), F.A.C., below. The landward extent of wetlands shall be determined by the dominance of plant species, soils and other hydrologic evidence indicative of regular and periodic inundation or saturation. In all cases, attempts shall be made to locate the landward extent of wetlands visually by on site inspection, or aerial photointerpretation in combination with ground truthing, without quantitative sampling. If this cannot be accomplished, the quantitative methods in paragraph 62-301.400(1)(c), F.A.C., shall be used unless the applicant or petitioner and regulating agency agree, in writing, on an alternative method for quantitatively analyzing the vegetation onsite. The methodology shall not be used to delineate areas which are not wetlands as defined in subsection 62-340.200(19), F.A.C., nor to delineate as wetlands or surface waters areas exempted from delineation by statute or agency rule.

(2) The Department shall be responsible for ensuring statewide coordination and consistency in the delineation of surface waters and wetlands pursuant to this rule, by providing training and guidance to the Department, Districts, and local governments in implementing the methodology.

Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History–New 7-1-94, Formerly 17-340.100.

62-340.200 Definitions.

When used in this chapter, the following terms shall mean:

(1) "Aquatic plant" means a plant, including the roots, which typically floats on water or requires water for its entire structural support, or which will desiccate outside of water.

(2) "Canopy" means the plant stratum composed of all woody plants and palms with a trunk four inches or greater in diameter at breast height, except vines.

(3) "Diameter at Breast Height (DBH)" means the diameter of a plant's trunk or main stem at a height of 4.5 feet above the ground.

(4) "Facultative plants" means those plant species listed in subsection 62-340.450(3), F.A.C., of this chapter. For the purposes of this rule, facultative plants are not indicators of either wetland or upland conditions.

(5) "Facultative Wet plants" means those plant species listed in subsection 62-340.450(2), F.A.C., of this chapter.

(6) "Ground Cover" means the plant stratum composed of all plants not found in the canopy or subcanopy, except vines and aquatic plants.

(7) "Ground truthing" means verification on the ground of conditions on a site.

(8) "Hydric Soils" means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.

(9) "Hydric Soil Indicators" means those indicators of hydric soil conditions as identified in Soil and Water Relationships of

Florida's Ecological Communities (Florida Soil Conservation ed. Staff 1992).

(10) "Inundation" means a condition in which water from any source regularly and periodically covers a land surface.

(11) "Obligate plants" means those plant species listed in subsection 62-340.450(1), F.A.C., of this chapter.

(12) "Regulating agency" means the Department of Environmental Protection, the water management districts, state or regional agencies, local governments, and any other governmental entities.

(13) "Riverwash" means areas of unstabilized sandy, silty, clayey, or gravelly sediments. These areas are flooded, washed, and reworked by rivers or streams so frequently that they may support little or no vegetation.

(14) "Saturation" means a water table six inches or less from the soil surface for soils with a permeability equal to or greater than six inches per hour in all layers within the upper 12 inches, or a water table 12 inches or less from the soil surface for soils with a permeability less than six inches per hour in any layer within the upper 12 inches.

(15) "Seasonal High Water" means the elevation to which the ground and surface water can be expected to rise due to a normal wet season.

(16) "Subcanopy" means the plant stratum composed of all woody plants and palms, exclusive of the canopy, with a trunk or main stem with a DBH between one and four inches, except vines.

(17) "Upland plants" means those plant species, not listed as Obligate, Facultative Wet, or Facultative by this rule, excluding vines, aquatic plants, and any plant species not introduced into the State of Florida as of the effective date of this rule.

(18) "U.S.D.A.-S.C.S." means the United States Department of Agriculture, Soil Conservation Service.

(19) "Wetlands," as defined in Section 373.019(25), F.S., means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.

Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History–New 7-1-94, Formerly 17-340.200.

62-340.300 Delineation of Wetlands.

The landward extent (i.e., the boundary) of wetlands as defined in subsection 62-340.200(19), F.A.C., shall be determined by applying reasonable scientific judgment to evaluate the dominance of plant species, soils, and other hydrologic evidence of regular and periodic inundation and saturation as set forth below. In applying reasonable scientific judgment, all reliable information shall be evaluated in determining whether the area is a wetland as defined in subsection 62-340.200(19), F.A.C.

(1) Before using the wetland delineation methodology described below, the regulating agency shall attempt to identify and delineate the landward extent of wetlands by direct application of the definition of wetlands in subsection 62-340.200(19), F.A.C., with particular attention to the vegetative communities which the definition lists as wetlands and non-wetlands. If the boundary cannot be located easily by use of the definition in subsection 62-340.200(19), F.A.C., the provisions of this rule shall be used to locate the landward extent of a wetland. In applying the provisions of this rule, the regulating agency shall attempt to locate the landward extent of wetlands visually by on site inspection, or aerial photointerpretation in combination with ground truthing.

(2) The landward extent of a wetland as defined in subsection 62-340.200(19), F.A.C., shall include any of the following areas:

(a) Those areas where the aereal extent of obligate plants in the appropriate vegetative stratum is greater than the areal extent of all upland plants in that stratum, as identified using the method in Rule 62-340.400, F.A.C., and either:

1. The substrate is composed of hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrological mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance,

2. The substrate is nonsoil, rock outcrop-soil complex, or the substrate is located within an artificially created wetland area, or

3. One or more of the hydrologic indicators listed in Rule 62-340.500, F.A.C., are present and reasonable scientific judgment

indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 62-340.200(19), F.A.C.

(b) Those areas where the areal extent of obligate or facultative wet plants, or combinations thereof, in the appropriate stratum is equal to or greater than 80% of all the plants in that stratum, excluding facultative plants, and either:

1. The substrate is composed of hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance,

2. The substrate is nonsoil, rock outcrop-soil complex, or the substrate is located within an artificially created wetland area, or

3. One or more of the hydrologic indicators listed in Rule 62-340.500, F.A.C., are present and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 62-340.200(19), F.A.C.

(c) Those areas, other than pine flatwoods and improved pastures, with undrained hydric soils which meet, in situ, at least one of the criteria listed below. A hydric soil is considered undrained unless reasonable scientific judgment indicates permanent artificial alterations to the on site hydrology have resulted in conditions which would not support the formation of hydric soils.

1. Soils classified according to United States Department of Agriculture's *Keys to Soil Taxonomy* (4th ed. 1990) as Umbraqualfs, Sulfaquents, Hydraquents, Humaquepts, Histosols (except Folists), Argiaquolls, or Umbraquults.

2. Saline sands (salt flats-tidal flats).

3. Soil within a hydric mapping unit designated by the U.S.D.A.-S.C.S. as frequently flooded or depressional, when the hydric nature of the soil has been field verified using the U.S.D.A.-S.C.S. approved hydric soil indicators for Florida. If a permit applicant, or a person petitioning for a formal determination pursuant to Section 373.421(2), F.S., disputes the boundary of a frequently flooded or depressional mapping unit, the applicant or petitioner may request that the regulating agency, in cooperation with the U.S.D.A.-S.C.S., confirm the boundary. For the purposes of Section 120.60(2), F.S., a request for a boundary confirmation pursuant to this subparagraph shall have the same effect as a timely request for additional information by the regulating agency. The regulating agency's receipt of the final response provided by the U.S.D.A.-S.C.S. to the request for boundary confirmation shall have the same effect as a receipt of timely requested additional information.

4. For the purposes of this paragraph only, "pine flatwoods" means a plant community type in Florida occurring on flat terrain with soils which may experience a seasonal high water table near the surface. The canopy species consist of a monotypic or mixed forest of long leaf pine or slash pine. The subcanopy is typically sparse or absent. The ground cover is dominated by saw palmetto with areas of wire grass, gallberry, and other shrubs, grasses, and forbs, which are not obligate or facultative wet species. Pine flatwoods do not include those wetland communities as listed in the wetland definition contained in subsection 62-340.200(19), F.A.C., which may occur in the broader landscape setting of pine flatwoods and which may contain slash pine. Also for the purposes of this paragraph only, "improved pasture" means areas where the dominant native plant community has been replaced with planted or natural recruitment of herbaceous species which are not obligate or facultative wet species and which have been actively maintained for livestock through mechanical means or grazing.

(d) Those areas where one or more of the hydrologic indicators listed in Rule 62-340.500, F.A.C., are present, and which have hydric soils, as identified using the U.S.D.A.-S.C.S. approved hydric soil indicators for Florida, and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 62-340.200(19), F.A.C. These areas shall not extent beyond the seasonal high water elevation.

(3)(a) If the vegetation or soils of an upland or wetland area have been altered by natural or man-induced factors such that the boundary between wetlands and uplands cannot be delineated reliably by use of the methodology in subsection 62-340.300(2), F.A.C., as determined by the regulating agency, and the area has hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a non hydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance, then the most reliable available information shall be used with reasonable scientific judgment to determine where the methodology in subsection 62-340.300(2), F.A.C., would have delineated the boundary between wetlands and uplands. Reliable available information may include, but is not limited to, aerial photographs, remaining vegetation, authoritative site-specific documents, or topographical consistencies.

(b) This subsection shall not apply to any area where regional or site-specific permitted activity, or activities which did not require a permit, under Sections 253.123 and 253.124, F.S. (1957), as subsequently amended, the provisions of Chapter 403, F.S. (1983), relating to dredging and filling activities, Chapter 84-79, Laws of Florida, and Part IV of Chapter 373, F.S., have altered the

hydrology of the area to the extent that reasonable scientific judgment, or application of the provisions of Section 62-340.550, F.A.C., indicate that under normal circumstances the area no longer inundates or saturates at a frequency and duration sufficient to meet the wetland definition in subsection 62-340.200(19), F.A.C.

(c) This subsection shall not be construed to limit the type of evidence which may be used to delineate the landward extent of a wetland under this chapter when an activity violating the regulatory requirements of Sections 253.123 and 253.124, F.S. (1957), as subsequently amended, the provisions of Chapter 403, F.S. (1983), relating to dredging and filling activities, Chapter 84-79, Laws of Florida, and Part IV of Chapter 373, F.S., has disturbed the vegetation or soils of an area.

(4) The regulating agency shall maintain sufficient soil scientists on staff to provide evaluation or consultation regarding soil determinations in applying the methodologies set forth in subsection 62-340.300(2) or (3), F.A.C. Services provided by the U.S.D.A.-S.C.S., or other competent soil scientists, under contract or agreement with the regulating agency, may be used in lieu of, or to augment, agency staff.

Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History–New 7-1-94, Formerly 17-340.300.

62-340.400 Selection of Appropriate Vegetative Stratum.

Dominance of plant species, as described in paragraphs 62-340.300(2)(a) and 62-340.300(2)(b), F.A.C., shall be determined in a plant stratum (canopy, subcanopy, or ground cover). The top stratum shall be used to determine dominance unless the top stratum, exclusive of facultative plants, constitutes less than 10 percent areal extent, or unless reasonable scientific judgment establishes that the indicator status of the top stratum is not indicative of the hydrologic conditions on site. In such cases, the stratum most indicative of on site hydrologic conditions, considering the seasonal variability in the amount and distribution of rainfall, shall be used. The evidence concerning the presence or absence of regular and periodic inundation or saturation shall be based on in situ data. All facts and factors relating to the presence or absence of regular and periodic inundation or saturation shall be weighed in deciding whether the evidence supports shifting to a lower stratum. The presence of obligate, facultative wet, or upland plants in a lower stratum does not by itself constitute sufficient evidence to shift strata, but can be considered along with other physical data in establishing the weight of evidence necessary to shift to a lower stratum. The burden of proof shall be with the party asserting that a stratum other than the top stratum should be used to determine dominance. Facultative plants shall not be considered for purposes of determining appropriate strata or dominance.

Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History–New 7-1-94, Formerly 17-340.400.

62-340.450 Vegetative Index.

(1) Obligate Species:

Scientific Name	Common Name
Acer saccharinum	maple, silver
Acoelorraphe wrightii	palm, paurotis
Acrostichum spp.	leather fern
Aeschynomene pratensis	joint-vetch, meadow
Agalinis linifolia	false-foxglove, flax-leaf
Agalinis maritima	false-foxglove, saltmarsh
Alisma subcordatum	water-plantain, subcordate
Alnus serrulata	alder, hazel
Alternanthera philoxeroides	alligator-weed
Alternanthera sessilis	alligator weed, sessile
Amaranthus australis	amaranth, southern
Amaranthus cannabinus	amaranth, tidemarsh
Amaranthus floridanus	amaranth, Florida
Ammannia spp.	toothcup
Annona glabra	pond apple
Aristida affinis	three-awn grass, long-leaf
Armoracia aquatica	lakecress

Arnoglossum sulcatum	indian-plantain, Georgia
Asclepias incarnata	milkweed, swamp
Asclepias lanceolata	milkweed, fen-flower
Asclepias perennis	milkweed, aquatic
Asclepias rubra	milkweed, red
Aster carolinianus	aster, climbing
Aster elliottii	aster, Elliott's
Aster subulatus	aster, saltmarsh
Aster tenuifolius	aster, saltmarsh
Avicennia germinans	mangrove, black
Baccharis angustifolia	false-willow
Bacopa spp.	water-hyssop
Batis maritima	saltwort
Betula nigra	birch, river
Bidens spp.	beggar-ticks
except *Bidens pilosa*	beggar-ticks, white (FAC)
Bidens bipinnata	Spanish needles (U)
Boehmeria cylindrica	false-nettle, small-spike
Borrichia spp.	sea oxeye
Burmannia spp.	burmannia
Callitriche spp.	water-starwort
Campanula floridana	bellflower
Canna spp.	canna
except *Canna x generalis*	canna, common (FAC)
Cardamine bulbosa	bitter-cress
Cardamine pensylvanica	spring-cress
Carex atlantica	sedge, prickly bog
Carex comosa	sedge, bearded
Carex crinita	sedge, fringed
Carex crus-corvi	sedge, raven-foot
Carex decomposita	sedge, cypress-knee
Carex elliottii	sedge, Elliott's
Carex folliculata	sedge, long
Carex gigantea	sedge, large
Carex howei	sedge, Howe's
Carex hyalinolepis	sedge, shoreline
Carex leptalea	sedge, bristly-stalk
Carex louisianica	sedge, Louisiana
Carex lupulina	sedge, hop
Carex lurida	sedge, shallow
Carex stipata	sedge, stalk-grain
Carex walteriana	sedge, Walter's
Carya aquatica	hickory, water
Cephalanthus occidentalis	buttonbush
Chamaecyparis thyoides	cedar, Atlantic white
Cicuta spp.	water-hemlock
Cirsium muticum	thistle, swamp

Cladium spp.	sawgrass
Cleistes divaricata	rosebud
Colocasia esculenta	elephant's ear
Coreopsis nudata	tickseed, Georgia
Cornus amomum	dogwood, silky
Crataegus aestivalis	mayhaw
Crinum americanum	swamp-lily, southern
Cyperus alternifolius	flatsedge, alternate-leaf
Cyperus articulatus	flatsedge, jointed
Cyperus difformis	flatsedge, variable
Cyperus distinctus	flatsedge, marshland
Cyperus drummondii	flatsedge
Cyperus entrerianus	flatsedge
Cyperus erythrorhizos	flatsedge, red-root
Cyperus haspan	flatsedge, sheathed
Cyperus lanceolatus	flatsedge, epiphytic
Cyperus papyrus	flatsedge, papyrus
Decodon verticillatus	swamp-loosestrife
Dichromena latifolia	white-top sedge, giant
Distichlis spicata	saltgrass, seashore
Drosera filiformis	sundew, thread-leaf
Drosera intermedia	sundew, spoon-leaf
Drosera tracyi	sundew, Gulf coast
Dulichium arundinaceum	sedge, three-way
Echinodorus spp.	burhead
Eleocharis spp.	spikerush
Erianthus giganteus	plumegrass, sugarcane
Erianthus strictus	plumegrass, narrow
Eriocaulon spp.	pipewort
Eryngium aquaticum	corn snakeroot
Eupatorium leptophyllum	marsh thoroughwort
Fimbristylis spp.	fringe-rush
except *Fimbristylis annua*	fringe-rush, annual (FACW)
F. puberula	fringe-rush, Vahl's (FACW)
F. spathacea	hurricane-grass (FAC)
Fraxinus spp.	ash
except *Fraxinum americana*	ash, white (U)
Fuirena spp.	umbrella-sedge
Gleditsia aquatica	water-locust
Glyceria striata	fowl mannagrass
Heteranthera reniformis	mud-plantain, kidney-leaf
Hibiscus coccineus	rosemallow, scarlet
Hibiscus grandiflorus	rosemallow, swamp
Hibiscus laevis	rosemallow, halberd-leaf
Hibiscus moscheutos	rosemallow, swamp
Hydrochloa caroliniensis	watergrass
Hydrocleis nymphoides	water-poppy

Hydrocotyle ranunculoides	penny-wort, floating
Hydrolea spp.	false-fiddle-leaf
Hygrophila spp.	hygrophila
Hymenachne amplexicaulis	trompetilla
Hymenocallis spp.	spider-lily
Hypericum chapmanii	St. John's-wort, Chapman's
Hypericum edisonianum	St. John's-wort, Edison's
Hypericum fasciculatum	St. John's-wort, marsh
Hypericum lissophloeus	St. John's-wort, smooth-bark
Hypericum nitidum	St. John's-wort, Carolina
Ilex amelanchier	holly, sarvis
Ilex cassine	holly, dahoon
Ilex myrtifolia	holly, myrtle
Ilex verticillata	winterberry
Illicium floridanum	anise, Florida
Impatiens capensis	touch-me-not, spotted
Iris spp.	Iris
except *I. verna*	dwarf iris (U)
Isoetes spp.	quillwort
Itea virginica	virginia willow
Iva frutescens	marsh elder
Juncus spp.	Rush
except *J. tenuis*	rush (FAC)
J. marginatus	rush (FACW)
Justicia spp.	water-willow
except J. *brandegeana*	shrimp plant (U)
Kosteletzkya virginica	mallow, seashore
Lachnocaulon digynum	bogbutton, pineland
Lachnocaulon engleri	bogbutton, Engler's
Lachnocaulon minus	bogbutton, Small's
Laguncularia racemosa	mangrove, white
Leersia spp.	cutgrass
Leitneria floridana	corkwood
Lilaeopsis spp.	lilaeopsis
Lilium iridollae	lily, panhandle
Limnobium spongia	frogbit
Limnophila spp.	marshweed
Limonium carolinianum	sea-lavender
Lindera melissaefolia	spicebush, southern
Linum westii	flax, West's
Liparis elata = (L. nervosa)	liparis, tall
Litsea aestivalis	pondspice
Lobelia cardinalis	cardinal flower
Lobelia floridana	lobelia, Florida
Ludwigia spp.	ludwigia; water-primrose
except *Ludwigia hirtella*	seedbox, hairy (FACW)
Ludwigia maritima	seedbox, seaside (FACW)

L. suffruticosa	seedbox, headed (FACW)
Ludwigia virgata	seedbox, savanna (FACW)
Lycium carolinianum	Christmas berry
Lycopus spp.	bugleweed
Lysimachia spp.	loosestrife
Lythrum spp.	marsh loosestrife
Macranthera flammea	flameflower
Magnolia virginiana var. australis	magnolia, sweetbay
Malaxis spicata	adder's-mouth, Florida
Maxillaria crassifolia	orchid, hidden
Melanthium virginicum	bunchflower, Virginia
Micranthemum spp.	baby tears
Micromeria brownei	savory, Brown's
Mimulus alatus	monkey-flower
Monanthochloe littoralis	keygrass
Muhlenbergia capillaris	muhly grass
Nasturtium spp.	water-cress
Nelumbo spp.	water-lotus
Nuphar luteum	cow-lily, yellow
Nymphaea spp.	water-lily
Nymphoides spp.	floating hearts
Nyssa aquatica	tupelo, water
Nyssa ogeche	tupelo, ogeechee
Nyssa sylvatica var. biflora	tupelo, swamp
Orontium aquaticum	golden club
Osmunda regalis	fern, royal
Oxypolis spp.	water drop-wort
Panicum ensifolium	panic grass
Panicum erectifolium	witchgrass, erect-leaf
Panicum gymnocarpon	panicum, savannah
Panicum hemitomon	maidencane
Panicum longifolium	panicum, tall thin
Panicum scabriusculum	panicum, woolly
Panicum tenerum	panicum, bluejoint
Parnassia spp.	grass-of-parnassus
Paspalidium geminatum	water panicum
Paspalum dissectum	paspalum, mudbank
Paspalum distichum	paspalum, joint
Paspalum monostachyum	paspalum, gulf
Paspalum praecox	paspalum, early
Paspalum repens	paspalum, water
Peltandra spp.	arum; spoon flower
Penthorum sedoides	ditch stonecrop
Pentodon pentandrus	pentodon, Hall's
Persea palustris	bay, swamp
Phragmites australis	reed, common
Physostegia godfreyi	dragon-head, Godfrey's

Physostegia leptophylla	dragon-head, slender-leaf
Pinckneya bracteata	fever-tree
Pinguicula spp.	butterwort
Planera aquatica	planer tree
Platanthera spp.	orchid, fringed
Pleea tenuifolia	rush-featherling
Pogonia ophioglossoides	pogonia, rose
Polygala cymosa	milkwort, tall
Polygonum spp.	smartweed
except *P. argyrocoleon*	smartweed, silversheath (U)
P. virginianum	jumpseed (FACW)
Pontederia cordata	pickerelweed
Populus heterophylla	cottonwood, swamp
Proserpinaca spp.	mermaid-weed
Psilocarya spp.	baldrush
Quercus lyrata	oak, overcup
Rhexia parviflora	meadow-beauty white
Rhexia salicifolia	meadow-beauty panhandle
Rhizophora mangle	mangrove, red
Rhynchospora cephalantha	beakrush, clustered
Rhynchospora chapmanii	beakrush, Chapman's
Rhynchospora corniculata	beakrush, short-bristle
Rhynchospora decurrens	beakrush, swamp-forest
Rhynchospora divergens	beakrush, spreading
Rhynchospora harperi	beakrush, Harper's
Rhynchospora inundata	beakrush, horned
Rhynchospora macra	beakrush, large
Rhynchospora microcarpa	beakrush, southern
Rhynchospora miliacea	beakrush, millet
Rhynchospora mixta	beakrush, mingled
Rhynchospora oligantha	beakrush, few-flower
Rhynchospora stenophylla	beakrush, Chapman's
Rhynchospora tracyi	beakrush, Tracy's
Rorippa spp.	yellow-cress
Rosa palustris	rose, swamp
Rotala ramosior	toothcup
Rudbeckia mohrii	coneflower, Mohr's
Sabatia bartramii	rose-gentian, Bartram's
Sabatia calycina	rose-gentian, coast
Sabatia dodecandra	rose-gentian, large
Sacciolepis striata	cupscale, American
Sagittaria spp.	arrowhead
Salicornia spp.	glasswort
Salix spp.	willow
Samolus spp.	pimpernel, water
Sarracenia spp.	pitcher-plant
except *Sarracenia minor*	pitcher-plant, hooded (FACW)

Saururus cernuus	lizard's tail
Scirpus spp.	bulrush
Scutellaria lateriflora	skullcap, blue
Scutellaria racemosa	skullcap
Senecio aureus	ragwort, golden
Senecio glabellus	butterweed
Setaria magna	foxtail
Sium suave	water-parsnip
Solidago elliottii	golden-rod, Elliott's
Solidago patula	golden-rod, rough-leaf
Sparganium americanum	burreed
Spartina alterniflora	cordgrass, saltmarsh
Spartina cynosuroides	cordgrass, big
Spartina spartinae	cordgrass, gulf
Spergularia marina	sandspurry, saltmarsh
Sphagnum spp.	sphagnum moss
Sphenopholis pensylvanica	wedgescale, swamp
Sporobolus virginicus	dropseed, seashore
Stachys lythroides	hedgenettle
Stillingia aquatica	corkwood
Styrax americana	snowbell; storax
Suaeda spp.	sea-blite
Taxodium ascendens	cypress, pond
Taxodium distichum	cypress, bald
Thalia geniculata	thalia; fire flag
Tofieldia racemosa	false-asphodel, coastal
Triadenum spp.	St. John's-wort, marsh
Triglochin striatam	arrow-grass
Typha spp.	cattail
Utricularia spp.	bladderwort
Veronica anagallis-aquat ica	speedwell, water
Vicia ocalensis	vetch, Ocala
Viola lanceolata	violet, lance-leaf
Websteria confervoides	water-meal
Woodwardia aereolata	chainfern
Xyris spp.	yellow-eyed grass
except *Xyris caroliniana*	yellow-eyed grass, Carolina (FACW)
Xyris jupicai	yellow-eyed grass, tropical (FACW)
Zizania aquatica	wildrice
Zizaniopsis miliacea	wildrice, southern

(2) Facultative Wet Species:

Scientific Name	Common Name
Abildgaardia ovata	rush, flat-spike
Acer negundo	box-elder
Acer rubrum	maple, red
Aeschynomene indica	joint-vetch, India
Agalinis aphylla	false-foxglove, scale-leaf

Agalinis pinetorum (=A. pulchella)	false-foxglove
Agalinis purpurea	false-foxglove, large purple
Agarista populifolia	hobble-bush
Agrostis stolonifera	redtop
Amorpha fruticosa	indigo-bush
Amphicarpum muhlenbergian um	blue maidencane
Amsonia rigida	slimpod, stiff
Amsonia tabernaemontana	slimpod, eastern
Andropogon glomeratus (Campbell)	bluestem, bushy
Andropogon liebmanii var. pungensis (Campbell) *(A. mohrii)*	bluestem, Mohr's
Anthaenantia rufa	silky-scale, purple
Apteria aphylla	nodding nixie
Arenaria godfreyi	stitchwort, Godfrey's
Arisaema spp.	jack-in-the-pulpit; green-dragon
Aristida purpurascens (s.l.)	three-awn grass, wand-like
Arnoglossum diversifolium	indian-plantain, variable-leaf
Arnoglossum ovatum	indian-plantain, egg-leaf
Aronia arbutifolia	red chokeberry
Arundinaria gigantea	giant cane
Asclepias connivens	milkweed, large-flower
Asclepias longifolia	milkweed, long-leaf
Asclepias pedicellata	milkweed, savannah
Asclepias viridula	milkweed, southern
Aster chapmanii	aster, savannah
Aster eryngiifolius	aster, coyote-thistle
Aster lateriflorus	aster, calico
Aster spinulosus	aster, bog
Aster vimineus	aster, small white
Athyrium filix-femina	fern, subarctic lady
Atriplex patula	saltbush, halberd-leaf
Balduina atropurpurea	honeycomb-head, purple
Balduina uniflora	honeycomb-head, one-flower
Bartonia spp.	screwstem
Bigelowia nudata	golden-rod, rayless
Blechnum serrulatum	swamp fern
Boltonia spp.	boltonia
Brachiaria purpurascens	paragrass
Cacalia suaveolens	indian-plantain, sweet-scent
Calamovilfa curtissii	Curtiss' reed grass
Calopogon spp.	grass-pinks
Calycocarpum lyonii	cupseed
Caperonia spp.	caperonia
Capparis flexuosa	caper-tree
Carex spp.	sedges
except *Carex atlantica*	sedge, prickly bog (OBL)
Carex comosa	sedge, bearded (OBL)
Carex crinita	sedge, fringed (OBL)

Carex crus-corvi	sedge, raven-foot (OBL)
Carex decomposita	sedge, cypress-knee (OBL)
Carex elliottii	sedge, Elliott's (OBL)
Carex folliculata	sedge, long (OBL)
Carex gigantea	sedge, large (OBL)
Carex howei	sedge, Howe's (OBL)
Carex hyalinolepis	sedge, shoreline (OBL)
Carex leptalea	sedge, bristly-stalk (OBL)
Carex louisianica	sedge, Louisiana (OBL)
Carex lupulina	sedge, hop (OBL)
Carex lurida	sedge, shallow (OBL)
Carex stipata	sedge, stalk-grain (OBL)
Carex walteriana	sedge, Walter's (OBL)
Carphephorus carnosus	chaffhead, pineland
Carphephorus pseudoliatris	chaffhead, bristle-leaf
Carpinus caroliniana	hornbeam, American
Celtis laevigata	sugar-berry; hackberry
Centella asiatica	coinwort
Chaptalia tomentosa	sunbonnet; pineland daisy
Chasmanthium spp.	spanglegrass
except *C. latifolum*	spanglegrass (FAC)
C. sessiliflorum	long-leaf Chasmanthium (FAC)
Chrysobalanus icaco	cocoplum
Cirsium lecontei	thistle, Leconte's
Cirsium nuttallii	thistle, Nuttall's
Clethra alnifolia	sweet pepper bush
Cliftonia monophylla	buckwheat-tree
Commelina spp.	dayflower
except *Commelina erecta*	dayflower, sandhill (U)
Conocarpus erectus	buttonwood
Coreopsis falcata	tickseed, sickle
Coreopsis floridana	tickseed, Florida
Coreopsis gladiata	tickseed, southeastern
Coreopsis integrifolia	tickseed, ciliate-leaf
Coreopsis leavenworthii	tickseed, Leavenworth's
Coreopsis linifolia	tickseed, Texas
Cornus foemina	swamp dogwood
Crataegus marshallii	haw, parsley
Crataegus viridis	haw, green
Croton elliottii	croton, Elliott's
Ctenitis submarginalis	fern, brown-hair comb
Ctenium spp.	toothache grass
Cuphea aspera	common waxweed
Cyperus spp.	flatsedge
except *C. alternifolius*	flatsedge, alternate-leaf (OBL)
Cyperus articulatus	flatsedge, jointed (OBL)
Cyperus difformis	flatsedge, variable (OBL)

Cyperus distinctus	flatsedge, marshland (OBL)
Cyperus drummondii	flatsedge (OBL)
Cyperus entrerianus	flatsedge (OBL)
C. erythrorhizos	flatsedge, red-root (OBL)
Cyperus haspan	flatsedge, sheathed (OBL)
Cyperus lanceolatus	flatsedge, epiphytic (OBL)
Cyperus papyrus	flatsedge, papyrus (OBL)
Cyperus cuspidatus	flatsedge, coastal-plain (FAC)
Cyperus esculentus	flatsedge (FAC)
Cyperus giganteus	flatsedge (FAC)
Cyperus globulosus	flatsedge, baldwin (FAC)
Cyperus huarmensis	flatsedge, black knotty-root (FAC)
Cyperus metzii	flatsedge (FAC)
Cyperus retrorsus	flatsedge (FAC)
Cyperus rotundus	flatsedge, purple (FAC)
Cyperus filiculmis	flatsedge, sandhill (U)
Cyperus ovularis	flatsedge (U)
Cyperus reflexus	flatsedge (U)
Cyperus refractus	flatsedge (U)
C. retrofractus	flatsedge (U)
Cyperus tetragonus	flatsedge (U)
Dichromena colorata	white-top sedge, starbrush
Dichromena floridensis	white-top sedge, Everglades
Dicliptera brachiata	mudwort, wild
Digitaria pauciflora	everglades grass
Diodia virginiana	button-weed
Dionaea muscipula	Venus' flytrap
Drosera brevifolia	sundew, dwarf
Drosera capillaris	sundew, pink
Dryopteris ludoviciana	shield-fern, southern
Dyschoriste humistrata	dyschoriste, swamp
Echinochloa spp.	jungle-rice; cockspur grass
Eclipta alba	yerba de Tajo
Elyonurus tripsacoides	balsam-scale, Pan-American
Equisetum hyemale	horsetail
Erianthus brevibarbus	plume grass, short-beard
Erigeron vernus	fleabane, early whitetop
Eriochloa spp.	cupgrass
Eryngium integrifolium	coyote-thistle, blue-flower
Eryngium prostratum	coyote-thistle, creeping
Eryngium yuccifolium	Rattlesnake master
Erythrodes querceticola	erythrodes, low
Eulophia alta	coco, wild
Eupatoriadelph us fistulosus	joe-pye-weed
Eupatorium leucolepis	thoroughwort, white-bract
Eupatorium mikanioides	thoroughwort, semaphore
Eupatorium perfoliatum	boneset

Euphorbia humistrata (=Chamaesyce humistrata)	broomspurge, spreading
Euphorbia inundata	spurge, Florida
Euphorbia polyphylla	spurge, many-leaved
Eustachys glauca (=Chloris glauca)	fingergrass, saltmarsh
Eustoma exaltatum	prairie-gentian
Evolvulus convolvuloides	evolvulus
Evolvulus sericeus	silky bindweed
Fimbristylis annua	fimbry, annual
Fimbristylis puberula	fimbry, Vahl's hairy
Flaveria floridana	yellowtop
Flaveria linearis	yellowtop
Forestiera acuminata	privet, swamp
Fothergilla gardenii	witch-alder, dwarf
Galium tinctorium	bedstraw, stiff marsh
Gaylussacia mosieri	woolly-berry
Gentiana spp.	gentian
Gleditsia triacanthos	honey-locust
Gordonia lasianthus	bay, loblolly
Gratiola spp.	hedgehyssop
except *Gratiola hispida*	hedgehyssop (FAC)
Habenaria spp.	rein orchid
Halesia diptera	silver-bell
Harperocallis flava	Harper's beauty
Hartwrightia floridana	hartwrightia, Florida
Hedychium coronarium	ginger
Helenium spp.	sneezeweed
except *Helenium amarum*	sneezeweed, pasture (FAC)
Helianthus agrestis	sunflower, southeastern
Helianthus angustifolius	sunflower, swamp
Helianthus carnosus	sunflower, lakeside
Helianthus heterophyllus	sunflower, wetland
Helianthus simulans	sunflower, muck
Heliotropium procumbens	heliotrope, four-spike
Hemicarpha spp.	dwarf-bullrush
Hibiscus aculeatus	rosemallow
Hydrocotyle spp.	pennywort
except *H. ranunculoides*	pennywort, floating (OBL)
Hypericum spp.	St. John's-wort
except *Hypericum chapmanii*	St. John's-wort, Chapman's (OBL)
H. edisonianum	St. John's-wort, Edison's (OBL)
H. fasciculatum	St. John's-wort, marsh (OBL)
H. lissophloeus	St. John's-wort, smooth-bark (OBL)
Hypericum nitidum	St. John's-wort, Carolina (OBL)
H. hypericoides	St. Andrew's cross (FAC)
H. tetrapetalum	St. John's-wort, four-petal (FAC)
H. cumulicola	St. John's-wort, scrub (U)
H. drummondii	St. John's-wort, Drummond's (U)

H. gentianoides	pineweed (U)
H. microsepalum	St. John's-wort, small-sepal (U)
H. prolificum	St. John's-wort, shrubby (U)
Hypericum punctatum	St. John's-wort, dotted (U)
Hypericum reductum	St. John's-wort, Atlantic (U)
Hypolepis repens	fern, bead
Hypoxis spp.	Stargrasses, yellow
Hyptis alata	musky mint
Ilex coriacea	holly, bay-gall
Ilex decidua	holly, deciduous
Illicium parviflorum	star anise
Iva microcephala	little marsh elder
Juncus marginatus	shore rush
Kalmia latifolia	laurel, mountain
Lachnocaulon anceps	bogbutton, white-head
Lachnocaulon beyrichianum	bogbutton, southern
Laportea canadensis	wood-nettle, Canada
Leptochloa spp.	sprangle-top
except *Leptochloa virgata*	sprangle-top, tropic (FAC)
Leucothoe spp.	dog-hobble
Liatris garberi	gayfeather, garber's
Lindera benzoin	spicebush, northern
Lindernia spp.	false-pimpernel
except *Lindernia crustacea*	false-pimpernel, Malayan (FAC)
Linum carteri	flax, Carter's
Linum striatum	flax, ridged yellow
Lipocarpha spp.	lipocarpha
Liquidambar styraciflua	sweetgum
Liriodendron tulipifera	tulip tree
Listera spp.	twayblade
Lobelia spp.	lobelia
except *Lobelia cardinalis*	flower, cardinal (OBL)
Lobelia floridana	lobelia, Florida (OBL)
Lophiola americana	golden-crest
Ludwigia hirtella	seedbox, hairy
Ludwigia maritima	seedbox, seaside
Ludwigia suffruticosa	seedbox, headed
Ludwigia virgata	seedbox, savanna
Lycopodium spp.	clubmoss
Lyonia lucida	fetter-bush
Lyonia mariana	fetter-bush
Macbridea spp.	birds-in-a-nest
Manisuris spp.	jointgrass
except *M. cylindrica*	jointgrass, pitted (FAC)
Marshallia graminifolia	barbara's-buttons, grass-leaf
Marshallia tenuifolia	barbara's-buttons, slim-leaf
Mecardonia spp.	mecardonia

Melanthera nivea	squarestem
Mitreola spp.	hornpod
Muhlenbergia schreberi	nimblewill
Myrica heterophylla	bayberry, evergreen
Myrica inodora	bayberry, odorless
Nemastylis floridana	pleatleaf, fall-flowering
Nemophila aphylla	baby-blue-eyes, small-flower
Oldenlandia spp.	bluets, water
Onoclea sensibilis	fern, sensitive
Osmunda cinnamomea	fern, cinnamon
Panicum abscissum (Hall)	cut-throat grass
Panicum dichotomiflorum	panicum, fall
Panicum dichotomum	panicum
Panicum pinetorum	panicum
Panicum repens	grass, torpedo
Panicum rigidulum	panicum, red-top
Panicum scoparium	panicum
Panicum spretum	panicum
Panicum verrucosum	panicum, warty
Panicum virgatum	switchgrass
Paspalum acuminatum	paspalum, brook
Paspalum boscianum	paspalum, bull
Paspalum floridanum	paspalum, Florida
Paspalum laeve	paspalum, field
Paspalum pubiflorum	paspalum, hairy-seed
Pavonia spicata	mangrove mallow
Philoxerus vermicularis	silverhead
Phyllanthus caroliniensis	leaf-flower, Carolina
Phyllanthus liebmannianus	leaf-flower, Florida
Physostegia purpurea	dragon-head, purple
Physostegia virginiana	dragon-head, false
Pieris phillyreifolia	fetter-bush, climbing
Pilea spp.	clearweed
Pinus glabra	pine, spruce
Pinus serotina	pine, pond
Platanus occidentalis	sycamore
Pluchea spp.	camphor-weed
Polygala spp.	milkwort
except *Polygala cymosa*	milkwort, tall yellow (OBL)
P. leptostachys	milkwort, sandhill (U)
Polygala lewtonii	milkwort, scrub (U)
Polygala polygama	milkwort, racemed (U)
P. verticillata	milkwort, whorled (U)
Polygonum virginianum	jumpseed
Ponthieva racemosa	shadow-witch
Populus deltoides	cotton-wood, eastern
Pteris tripartita	brake, giant

Ptilimnium capillaceum	mock bishop-weed
Pycnanthemum nudum	mountain-mint, coastal-plain
Quercus laurifolia	oak, laurel
Quercus michauxii	oak, swamp chestnut
Quercus nigra	oak, water
Quercus pagoda	oak, cherry-bark
Quercus phellos	oak, willow
Ranunculus spp.	butter-cup
Reimarochloa oligostachya	grass, Florida reimar
Rhapidophyllu m hystrix	palm, needle
Rhexia spp.	meadow-beauty
except *Rhexia parviflora*	meadow-beauty white (OBL)
Rhexia salicifolia	meadow-beauty panhandle (OBL)
Rhododendron viscosum	azalea, swamp
Rhynchospora spp.	beakrush
except *R. cephalantha*	beakrush, clustered (OBL)
R. chapmanii	beakrush, Chapman's (OBL)
R. corniculata	beakrush, short-bristle (OBL)
R. decurrens	beakrush, swamp-forest (OBL)
R. divergens	beakrush, spreading (OBL)
R. harperi	beakrush, Harper's (OBL)
R. inundata	beakrush, horned (OBL)
Rhynchospora macra	beakrush, large (OBL)
R. microcarpa	beakrush, southern (OBL)
R. miliacea	beakrush, millet (OBL)
Rhynchospora mixta	beakrush, mingled (OBL)
R. oligantha	beakrush, few-flower (OBL)
R. stenophylla	beakrush, Chapman's (OBL)
Rhynchospora tracyi	beakrush, Tracy's (OBL)
Rhynchospora grayi	beakrush, Gray's (U)
R. intermedia	beakrush, pinebarren (U)
R. megalocarpa	beakrush, giant-fruited (U)
Roystonea spp.	palm, royal
Rudbeckia fulgida	coneflower, orange
Rudbeckia graminifolia	coneflower, grass-leaf
Rudbeckia laciniata	coneflower, cut-leaf
Rudbeckia nitida	coneflower, shiny
Ruellia noctiflora	wild-petunia, night-flowering
Rumex spp.	dock
Sabal minor	palmetto, dwarf
Sabatia spp.	rose-gentian
except *Sabatia bartramii*	rose-gentian, Bartram's (OBL)
Sabatia calycina	rose-gentian, coast (OBL)
Sabatia dodecandra	rose-gentian, large (OBL)
Sachsia polycephala	sachsia
Sarracenia minor	pitcher-plant, hooded
Schoenolirion croceum	sunny bells

Schoenolirion elliottii	sunny bells
Schoenus nigricans	black-sedge
Scleria spp.	nutrush
Sclerolepis uniflora	hardscale, one flower
Selaginella apoda	spike-moss, meadow
Sesuvium spp.	sea-purslane
Sisyrinchium atlanticum	blue-eye-grass, eastern
Sisyrinchium capillare	blue-eye-grass
Sisyrinchium mucronatum	blue-eye-grass, Michaux's
Solanum bahamense	canker-berry
Solanum erianthum	night-shade, shrub
Solidago fistulosa	golden-rod, marsh
Solidago leavenworthii	golden-rod, leavenworth's
Solidago sempervirens	golden-rod, seaside
Solidago stricta	golden-rod, willow-leaf
Sophora tomentosa	coast sophora
Spartina bakeri	cordgrass, sand
Spartina patens	cordgrass, saltmeadow
Spermacoce glabra	button-plant, smooth
Sphenoclea zeylandica	chicken-spike
Sphenostigma coelestinum	ixia, Bartram's
Spigelia loganioides	pink-root
Spilanthes americana	spotflower, creeping
Spiranthes spp.	ladies'-tresses
Sporobolus floridanus	dropseed, Florida
Staphylea trifolia	bladdernut, American
Stenandrium floridanum	stenandrium
Stenanthium gramineum	feather-bells, eastern
Stipa avenacioides	grass, Florida needle
Stokesia laevis	stokesia
Syngonanthus flavidulus	bantam-buttons
Teucrium canadense	germander, American
Thalictrum spp.	meadow-rue
Thelypteris spp.	shield fern
Tilia americana	American basswood
Toxicodendron vernix	poison sumac
Trachelosperm um difforme	climbing-dogbane
Trepocarpus aethusae	trepocarpus, aethusa-like
Trianthema portulacastrum	horse-purslane
Tridens ambiguus	tridens, savannah
Tridens strictus	tridens, long-spike
Triphora spp.	pogonias, nodding
Ulmus spp.	elm
except *Ulmus rubra*	elm, slippery (U)
Urechites lutea	allamanda, wild
Uvularia floridana	bellwort, Florida
Vaccinium corymbosum	blueberry, highbush

Verbena scabra	vervain, sandpaper
Verbesina chapmanii	crownbeard, Chapman's
Verbesina heterophylla	crownbeard, diverse-leaf
Vernonia spp.	ironweed
except *V. angustifolia*	ironweed, narrow-leaf (U)
Veronicastrum virginicum	culver's root
Viburnum dentatum	arrow-wood
Viburnum nudum	viburnum, possum-haw
Viburnum obovatum	viburnum, walter
Vicia acutifolia	vetch, four-leaf
Vicia floridana	vetch, Florida
Viola affinis	violet, Leconte's
Viola esculenta	violet, edible
Viola primulifolia	violet, primrose-leaf
Woodwardia virginica	chainfern
Xanthorhiza simplicissima	yellow-root, shrubby
Xanthosoma sagittifolium	elephant ear
Xyris caroliniana	yellow-eyed-grass, Carolina
Xyris jupicai	yellow-eyed-grass, Richard's
Yeatesia viridiflora	yeatesia, green-flower
Zephyranthes atamasco	lily, atamasco
Zigadenus densus	crow poison
Zigadenus glaberrimus	deathcamas, Atlantic

Within Monroe County and the Key Largo portion of Miami-Dade County only, the following species shall be listed as Facultative Wet:

Scientific Name	Common Name
Alternanthera maritima	beach alternanthera
Morinda royoc	Keys rhubarb
Strumpfia maritima	strumpia

(3) Facultative Species:

Scientific Name	Common Name
Acacia	ear-leaved acacia
Aletris spp.	colic-root
Alopecurus carolinianus	foxtail, tufted
Anagallis pumila	pimpernel, Florida
Andropogon arctatus (Campbell)	bluestem, savannah
Andropogon brachystachys (Campbell)	bluestem, short-spike
Andropogon gerardii (Campbell)	bluestem, big
Andropogon perangustatus (Campbell)	bluestem, slim
Andropogon virginicus (Campbell)	broom-sedge
Ardisia spp.	marlberry
Aristida rhizomophora	grass, rhizomatous three-awn
Aristida spiciformis	bottlebrush, three-awn
Aristida stricta	grass, pineland three-awn
Arundo donax	reed, giant
Aster dumosus	aster, bushy
Aster umbellatus	aster, flat-top white

Axonopus spp.	carpet grass
Baccharis dioica	false-willow, broom-bush
Baccharis glomeruliflora	groundsel tree
Baccharis halimifolia	false-willow, eastern
Bucida buceras	gregory wood
Bidens pilosa	beggar-ticks, hairy
Bumelia celastrina	bumelia, coastal
Bumelia lycioides	bumelia, buckthorn
Bumelia reclinata	bumelia
Campanula americana	bellflower, American
Canna x generalis	garden canna
Carphephorus odoratissimus	vanilla plant
Carphephorus paniculatus	deer-tongue
Casuarina spp.	casuarina
Cayaponia guingueloba	cyaponia, five-lobe
Cestrum diurnum	day jessamine
Chasmanthium latifolium	spanglegrass
Chasmanthium sessiliflorum	long-leaf Chasmanthium
Chiococca spp.	snowberry
Colubrina asiatica	snakewood, Asian
Conoclinium coelestinum	mistflower
Coreopsis tripteris	tickseed, tall
Cupaniopsis anacardioides	carrotwood
Cuphea carthagenensis	waxweed, Columbia
Cyperus cuspidatus	flatsedge, coastal-plain
Cyperus giganteus	flatsedge
Cyperus globulosus	flatsedge, baldwin
Cyperus huarmensis	flatsedge, black knotty-root
Cyperus metzii	flatsedge
Cyperus retrorsus	flatsedge
Cyperus rotundus	flatsedge, purple
Cypselea humifusa	panal
Cyrilla racemiflora	cyrilla, swamp
Dichondra caroliniensis	pony-foot
Digitaria serotina	crabgrass, dwarf
Diospyros virginiana	persimmon, common
Drymaria cordata	West Indian chickweed
Elytraria caroliniensis	scaly-stem, Carolina
Eragrostis spp.	lovegrass
Erechites hieraciifolia	fireweed
Erigeron guercifolius	fleabane
Erithralis fruticosa	black torchwood
Eryngium bladwini	coyote-thistle, Baldwin's
Eupatorium spp.	thoroughworts
except *E. leptophyllum*	thoroughwort, secund (OBL)
E. leucolepis	thoroughwort, white-bract (FACW)
E. mikanioides	thoroughwort, semaphore (FACW)

E. perfoliatum	boneset, common (FACW)
Eustachys petracea	finger grass
Euthamia spp.	bushy goldenrod
Ficus aurea	fig, Florida strangler
Fimbristylis spathacea	hurricane-grass
Flaveria bidentis	yellowtop
Flaveria trinervia	yellowtop
Forestiera segregata	privet, Florida
Gaylussacia dumosa	dwarf huckleberry
Gaylussacia frondosa	dangleberry
Gratiola hispida	hyssop, hispid
Helenium amarum	sneezeweed, pasture
Helianthus floridanus	sunflower, Florida
Heliotropium curassavicum	heliotrope, seaside
Heliotropium polyphyllum	heliotrope
Hibiscus tiliaceus	rosemallow, sea
Hypericum hypericoides	St. Andrew's cross
Ilex opaca var. opaca	American holly
Ilex vomitoria	yaupon holly
Jacquinia keyensis	Joewood
Juncus tenuis	rush, path
Kosteletzkya pentasperma	mallow, coastal
Lachnanthes caroliniana	redroot
Leptochloa virgata	sprangle-top, tropic
Liatris gracilis	blazing star
Liatris spicata	gayfeather, spiked
Lilium catesbaei	lily, southern red
Lindernia crustacea	false-pimpernel, Malayan
Linum floridanum	flax, Florida yellow
Linum medium	flax, stiff yellow
Lyonia ligustrina	maleberry
Manisuris cylindrica	joint grass, pitted
Maytenus phyllanthoides	Florida mayten
Melaleuca guinguenervia	punk tree
Melochia corchorifolia	chocolate-weed
Metopium toxiferum	poison wood
Mimosa pigra	mimosa, black
Morus rubra	mulberry, red
Muhlenbergia expansa	cutover muhly
Murdannia spp.	dewflower
Myosurus minimus	mouse-tail, tiny
Myrica cerifera	bayberry, southern
Myrsine guianensis	myrsine, guiana
Nephrolepis spp.	sword ferns
Neyraudia reynaudiana	reed, silk
Oplismenus setarius	grass, woods
Oryza sativa	rice, cultivated

Panicum anceps	panicum, beaked
Panicum commutatum (Hall)	panicum
Panicum hians	panicum, gaping
Panicum strigosum	panicum
Panicum tenue	panicum
Parietaria spp.	pellitory
Paspalum conjugatum	paspalum, sour
Paspalum dilatatum	dallisgrass
Paspalum fimbriatum	paspalum, Panama
Paspalum plicatulum	paspalum, brown-seed
Paspalum setaceum	paspalum, thin
Paspalum urvillei	grass, vasey
Pennisetum purpureum	elephant ear grass
Phalaris spp.	grass, canary
Phyla spp.	frog-fruit
Phyllanthus urinaria	leaf-flower, water
Piriqueta caroliniana	piriqueta
Polypogon spp.	grass, rabbit-foot
Polypremium procumbens	rustweed
Psidium cattleianun	guava, strawberry
Psychotria spp.	wild coffee
Rhodomyrtus tomentosus	downy rose myrtle
Rubus spp.	blackberries
Ruellia brittoniana	wild-petunia, Britton's
Ruellia caroliniensis	wild petunia
Sabal palmetto	palm, cabbage
Sacciolepis indica	grass, glenwood
Sambucus canadensis	elderberry
Sapium sebiferum	tallow-tree, Chinese
Schinus terebinthifolius	pepper-tree, Brazilian
Schizachyrium spp.	bluestem
Scoparia dulcis	sweet broom
Scutellaria floridana	skullcap
Scutellaria integrifolia	rough skullcap
Sebastiana fruticosa	sebastian-bush, gulf
Sesbania spp.	rattle-bush
Setaria geniculata	grass, bristle
Seymeria cassiodes	black senna
Solidago rugosa	golden-rod, wrinkled
Stillingia sylvatica var. tenuis	queen's-delight, marsh
Suriana maritima	bay-cedar
Syzygium spp.	Java plum
Thespesia populnea	seaside mahoe
Tradescantia fluminensis	trailing spiderwort
Trema spp.	trema
Tripsacum dactyloides	grass, eastern gama
Vaccinium elliottii	blueberry, Elliott

Verbesina virginica	crownbeard, white
Wedelia trilobata	creeping ox-eye

Within Monroe County and the Key Largo portion of Miami-Dade County only, the following species shall be listed as Facultative:

Scientific Name	Common Name
Alternanthera paronychioides	Smooth chaff-flower
Byrsonima lucida	locust-berry
Ernodea littoralis	golden creeper
Guapira discolor	blolly
Manilkara bahamensis	wild dilly
Pisonia rotundata	pisonia
Pithecellobium keyensis	blackbead
Pithecellobium unguis-cati	catsclaw
Randia aculeata	box briar
Reynosia septentrionalis	darling plum
Thrinax radiata	Florida thatch palm

(4) Nomenclature. Use of plants in this rule is based solely on the scientific names. Common names are included in the above lists for information purposes only. The following references shall be used by the regulating agency to resolve any uncertainty about the nomenclature or taxonomy of any plant listed by a given scientific name in this section: R. Godfrey, Trees, Shrubs and Woody Vines of Northern Florida and Adjacent Georgia & Alabama (Univ. Ga. Press, Athens 1988) and D. Lellinger, Ferns & Fern-Allies of the United States & Canada (Smithsonian Institution Press, Washington D.C. 1985) for all species covered by these references. For all other listed scientific names the following references will be followed unless the species list in this section designates a different authority next to an individual species name: R. Godfrey & J. Wooten, Aquatic and Wetland Plants of Southeastern United States: Monocotyledons (Univ. Ga. Press, Athens 1979); R. Godfrey & J. Wooten, Aquatic and Wetland Plants of Southeastern United States: Dicotyledons (Univ. Ga. Press, Athens 1979); D. & H. Correll, Flora of the Bahama Archipelago (A.R. Gantner, Germany 1982). When the species list in this section designates a different authority next to an individual species name, the regulating agency shall resolve any ambiguity in nomenclature by using the name identified in D. Hall, The Grasses of Florida (Doctoral Dissertation, Univ. of Fla., Gainesville 1978); or C. Campbell, Systematics of the Andropogon Virginicus Complex (GRAMINEAE), 64 Journal of the Arnold Arboretum 171-254 (1983).

Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History–New 7-1-94, Formerly 17-340.450.

62-340.500 Hydrologic Indicators.

The indicators below may be used as evidence of inundation or saturation when used as provided in Rule 62-340.300, F.A.C. Several of the indicators reflect a specific water elevation. These specific water elevation indicators are intended to be evaluated with meteorological information, surrounding topography and reliable hydrologic data or analyses when provided, to ensure that such indicators reflect inundation or saturation of a frequency and duration sufficient to meet the wetland definition in subsection 62-340.200(19), F.A.C., and not rare or aberrant events. These specific water elevation indicators are not intended to be extended from the site of the indicator into surrounding areas when reasonable scientific judgment indicates that the surrounding areas are not wetlands as defined in subsection 62-340.200(19), F.A.C.

(1) Algal mats. The presence or remains of nonvascular plant material which develops during periods of inundation and persists after the surface water has receded.

(2) Aquatic mosses or liverworts on trees or substrates. The presence of those species of mosses or liverworts tolerant of or dependent on surface water inundation.

(3) Aquatic plants. Defined in subsection 62-340.200(1), F.A.C.

(4) Aufwuchs. The presence or remains of the assemblage of sessile, attached or free-living, nonvascular plants and invertebrate animals (including protozoans) which develop a community on inundated surfaces.

(5) Drift lines and rafted debris. Vegetation, litter, and other natural or manmade material deposited in discrete lines or locations on the ground or against fixed objects, or entangled above the ground within or on fixed objects in a form and manner which indicates that the material was waterborne. This indicator should be used with caution to ensure that the drift lines or rafted debris

represent usual and recurring events typical of inundation or saturation at a frequency and duration sufficient to meet the wetland definition of subsection 62-340.200(19), F.A.C.

(6) Elevated lichen lines. A distinct line, typically on trees, formed by the water-induced limitation on the growth of lichens.

(7) Evidence of aquatic fauna. The presence or indications of the presence of animals which spend all or portions of their life cycle in water. Only those life stages which depend on being in or on water for daily survival are included in this indicator.

(8) Hydrologic data. Reports, measurements, or direct observation of inundation or saturation which support the presence of water to an extent consistent with the provisions of the definition of wetlands and the criteria within this rule, including evidence of a seasonal high water table at or above the surface according to methodologies set forth in *Soil and Water Relationships of Florida's Ecological Communities* (Florida Soil Conservation Staff 1992).

(9) Morphological plant adaptations. Specialized structures or tissues produced by certain plants in response to inundation or saturation which normally are not observed when the plant has not been subject to conditions of inundation or saturation.

(10) Secondary flow channels. Discrete and obvious natural pathways of water flow landward of the primary bank of a stream watercourse and typically parallel to the main channel.

(11) Sediment deposition. Mineral or organic matter deposited in or shifted to positions indicating water transport.

(12) Vegetated tussocks or hummocks. Areas where vegetation is elevated above the natural grade on a mound built up of plant debris, roots, and soils so that the growing vegetation is not subject to the prolonged effects of soil anoxia.

(13) Water marks. A distinct line created on fixed objects, including vegetation, by a sustained water elevation.

Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History–New 7-1-94, Formerly 17-340.500.

62-340.550 Wetland Hydrology.

A wetland delineation using the methodology described above, can be refuted by either reliable hydrologic records or site specific hydrologic data which indicate that neither inundation for at least seven consecutive days, nor saturation for at least twenty consecutive days, occurs during conditions which represent long-term hydrologic conditions. Hydrologic records or site specific hydrologic data must be of such a duration, frequency, and accuracy to demonstrate that the records or data are representative of the long-term hydrologic conditions, including the variability in quantity and seasonality of rainfall. When sufficient amounts of either reliable hydrologic records or site specific hydrologic data are not available to prove that the wetland area of concern does not inundate or saturate as described above, a site-specific field-verified analytic or numerical model may be used to demonstrate that the wetland area no longer inundates or saturates regularly or periodically under typical long-term hydrologic conditions. Before initiating the use of a model to evaluate if a wetland delineation should be refuted based on hydrologic conditions, the applicant or petitioner shall first meet with the appropriate regulating agency and reach an agreement on the terms of study, including data collection, the specific model, model development and calibration, and model verification. If the data, analyses, or models are deemed inadequate based on the hydrologic conditions being addressed, the regulating agency shall provide a case-by-case review of the applicability of any data, analyses, or models and shall provide specific reasons, based on generally accepted scientific and engineering practices, why they are inadequate.

Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History–New 7-1-94, Formerly 17-340.550.

62-340.600 Surface Waters.

(1) For the purposes of Section 373.421, F.S., surface waters are waters on the surface of the earth, contained in bounds created naturally or artificially, including, the Atlantic Ocean, the Gulf of Mexico, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, and other watercourses. However, state water quality standards apply only to those waters defined in Section 403.031(13), F.S.

(2) The landward extent of a surface water in the State for the purposes of implementing Section 373.414, F.S., shall be the more landward of the following:

(a) Wetlands as located by Rule 62-340.300, F.A.C., of this chapter;

(b) The mean high water line elevation for tidal water bodies;

(c) The ordinary high water line for non-tidal natural water bodies;

(d) The top of the bank for artificial lakes, borrow pits, canals, ditches and other artificial water bodies with side slopes of 1 foot vertical to 4 feet horizontal or steeper, excluding spoil banks when the canals and ditches have resulted from excavation into the ground, or

(e) The seasonal high water line for artificial lakes, borrow pits, canals, ditches, and other artificial water bodies with side slopes flatter than 1 foot vertical to 4 feet horizontal along with any artificial water body created by diking or impoundment above the ground.

(3) Determinations made pursuant to paragraphs (2)(b) and (2)(c), shall be for regulatory purposes and are not intended to be a delineation of the boundaries of lands for the purposes of title.

Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211, 403.031(13) FS. History–New 7-1-94, Formerly 17-340.600.

62-340.700 Exemptions for Treatment or Disposal Systems.

(1) Alteration and maintenance of the following shall be exempt from the rules adopted by the department and the water management districts to implement Sections 373.414(1) through 373.414(6), 373.414(8) and 373.414(10), F.S.; and Section 373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to Section 373.414, F.S. (1991):

(a) Works, impoundments, reservoirs, and other watercourses constructed and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under Rules 62-28.700, 62-302.520, F.A.C., Chapter 62-17, 62-600, 62-610, 62-640, 62-650, 62-660, 62-670, 62-671, 62-673, or 62-701, F.A.C., or Section 403.0885, F.S., or rules implementing Section 403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 62-611, F.A.C., or Section 403.0885, F.S., or its implementing rules;

(b) Works, impoundments, reservoirs, and other watercourses constructed solely for wastewater treatment or disposal before a construction permit was required under Chapter 403, F.S., and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under Rules 62-28.700, 62-302.520, F.A.C., Chapters 62-17, 62-600, 62-610, 62-640, 62-650, 62-660, 62-670, 62-671, 62-673, or 62-701, F.A.C., or Section 403.0885, F.S., or rules implementing Section 403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 62-611, F.A.C., or Section 403.0885, F.S., or its implementing rules;

(c) Works, impoundments, reservoirs, and other watercourses of less than 0.5 acres in combined area on a project-wide basis, constructed and operated solely for stormwater treatment in accordance with a noticed exemption under Chapter 62-25, F.A.C., or a valid permit issued under Chapters 62-25 (excluding Rule 62-25.042), 62-330, 40B-4, 40C-4, 40C-42 (excluding Rule 40C-42.0265), 40C-44, 40D-4, 40D-40, 40D-45, or 40E-4, F.A.C., except those permitted as wetland stormwater treatment systems, or

(d) Works, impoundments, reservoirs, and other watercourses of less than 0.5 acres in combined area on a project-wide basis, constructed and operated solely for stormwater treatment before a permit was required under Chapter 62-25, 40B-4, 40C-4, 40C-42, 40C-44, 40D-4, 40D-40, 40D-45, or 40E-4, F.A.C.

(2) Alteration and maintenance of the following shall be exempt from the rules adopted by the department and the water management districts to implement Sections 373.414(1), 373.414(2)(a), 373.414(8), and 373.414(10), F.S.; and Sections 373.414(3) through 373.414(6), F.S.; and Section 373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to Section 373.414, F.S. (1991), except for authority to protect threatened and endangered species in isolated wetlands:

(a) Works, impoundments, reservoirs, and other watercourses of 0.5 acre or greater in combined area on a project-wide basis, constructed and operated solely for stormwater treatment in accordance with a noticed exemption under Chapter 62-25, F.A.C., or a valid permit issued under Chapters 62-25 (excluding Rule 62-25.042), 62-330, 40B-4, 40C-4, 40C-42 (excluding Rule 40C-42.0265), 40C-44, 40D-4, 40D-40, 40D-45, 40E-4, F.A.C., except those permitted as wetland stormwater treatment systems, or

(b) Works, impoundments, reservoirs, and other watercourses of 0.5 acres or greater in combined area on a project-wide basis, constructed and operated solely for stormwater treatment before a permit was required under Chapter 62-25, 40B-4, 40C-4, 40C-42, 40C-44, 40D-4, 40D-40, 40D-45, or 40E-4, F.A.C.

(3) The exemptions in subsections 62-340.700(1) and (2), shall not apply to works, impoundments, reservoirs or other watercourses that:

(a) Are currently wetlands which existed before construction of the stormwater treatment system and were incorporated in it;

(b) Are proposed to be altered through expansion into wetlands or other surface waters, or

(c) Are wetlands created, enhanced, or restored as mitigation for wetland or surface water impacts under a permit issued by the Department or a water management district.

(4) Alterations and maintenance of works, impoundments, reservoirs, and other watercourses exempt under this subsection shall

not be considered in determining whether any wetland permitting threshold is met or exceeded under Part IV of Chapter 373, F.S.

(5) Works, impoundments, reservoirs, and other watercourses exempt under this subsection, other than isolated wetlands in systems described in subsection 62-340.700(2), F.A.C., above, shall not be delineated under Section 373.421, F.S.

(6) This exemption shall not affect the application of state water quality standards, including those applicable to Outstanding Florida Waters, at the point of discharge to waters as defined in subsection 403.031(13), F.S.

(7) As used in this subsection, "solely for" means the reason for which a work, impoundment, reservoir, or other watercourse is constructed and operated; and such construction and operation would not have occurred but for the purposes identified in subsection 62-340.700(1) or 62-340.700(2), F.A.C. Furthermore, the phrase does not refer to a work, impoundment, reservoir, or other watercourse constructed or operated for multiple purposes. Incidental uses, such as occasional recreational uses, will not render the exemption inapplicable, so long as the incidental uses are not part of the original planned purpose of the work, impoundment, reservoir, or other watercourse. However, for those works, impoundments, reservoirs, or other watercourses described in paragraphs 62-340.700(1)(c) and 62-340.700(2)(a), F.A.C., use of the system for flood attenuation, whether originally planned or unplanned, shall be considered an incidental use, so long as the works, impoundments, reservoirs, and other watercourses are no more than 2 acres larger than the minimum area required to comply with the stormwater treatment requirements of the district or department. For the purposes of this subsection, reuse from a work, impoundment, reservoir, or other watercourse is part of treatment or disposal.

Rulemaking Authority 373.414(9) FS. Law Implemented 373.414(9) FS. History–New 7-1-94, Formerly 17-340.700.

62-340.750 Exemption for Surface Waters or Wetlands Created by Mosquito Control Activities.

Construction, alteration, operation, maintenance, removal, and abandonment of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, or works, in, on or over lands that have become surface waters or wetlands solely because of mosquito control activities undertaken as part of a governmental mosquito control program, and which lands were neither surface waters nor wetlands before such activities, shall be exempt from the rules adopted by the department and water management districts to implement Sections 373.414(1) through 373.414(6), 373.414(8), and 373.414(10), and 373.414(7), F.S., regarding any authority granted pursuant to Section 373.414, F.S. (1991). Activities exempted under this section shall not be considered in determining whether any wetland permitting threshold is met or exceeded under Part IV of Chapter 373, F.S. This exemption shall not affect the regulation of impacts on other surface waters or wetlands, or the application of state water quality standards to waters as defined in subsection 403.031(13), F.S., including standards applicable to Outstanding Florida Waters.

Rulemaking Authority 373.414(9) FS. Law Implemented 373.414(9) FS. History–New 7-1-94, Formerly 17-340.750.

Chapter 62-331, F.A.C.
State 404 Program

Chapter 62-331 (as adopted)

62-331.245 General Permit for Land-Based Renewable Energy Generation Facilities
62-331.246 General Permit for Water-Based Renewable Energy Generation Pilot Projects
62-331.247 General Permit for Removal of Low-Head Dams
62-331.248 General Permit for Florida Department of Transportation and Florida's Turnpike Enterprise

62-331.010 Intent, Purpose, and Implementation

(1) This Chapter, together with the rules and all documents it incorporates by reference, implements the State 404 Program under Section 373.4146, F.S.

(2) The State 404 Program governs all dredging and filling in waters of the United States regulated by the State under Section 373.4146, F.S. ("assumed waters" or "state-assumed waters"), and will be implemented in conjunction with the environmental resource permitting (ERP) program established in Part IV of Chapter 373, F.S.

(3) The State wetland delineation methodology in Chapter 62-340, F.A.C., shall be used to determine the boundary of state-assumed waters. Agency staff shall document the boundary of state-assumed waters using Form 62-330.201(1), "Chapter 62-340, F.A.C., Data Form" (effective date), incorporated by reference in subsection 62-330.201(1), F.A.C., and as described in Section 7.1 of Applicant's Handbook Volume I (hereinafter "Volume I") (effective date), incorporated by reference in paragraph 62-330.010(4)(a), F.A.C. (https://www.flrules.org/Gateway/reference.asp?No=Ref-12078).

(4) The term "Agency" applies to the Department or a Water Management District, as applicable, throughout this Chapter.

(5) This Chapter is used in conjunction with Chapter 62-330, F.A.C., Volume I and the State 404 Program Applicant's Handbook (hereinafter "404 Handbook"), incorporated by reference herein (effective date) (https://www.flrules.org/Gateway/reference.asp?No=Ref-12064).

(6) A State 404 Program permit ("permit") is not an authorization under Chapter 62-330, F.A.C., and shall be reviewed as a separate authorization.

(7) Where there are conflicts between this Chapter and other state rules and statutes, this Chapter will control with regard to the State 404 Program (See section 8.4 of the 404 Handbook).

(8) A copy of rules, forms, and other documents incorporated by reference herein and in Chapter 62-330, F.A.C., may also be obtained from the Agency Internet site or by contacting staff in an Agency office identified in Appendix A of Volume I.

(9) This Chapter explains how to submit notices and applications for activities regulated under the State 404 Program and provides the standards for Agency review and action.

(10) Where both an ERP and a State 404 Program authorization are required for a dredge or fill activity, an applicant must receive both authorizations prior to conducting the dredge or fill activity. An applicant may choose to have both authorizations issued concurrently to avoid the need for subsequent modification of the project that may occur if one authorization is issued before the other.

(a) Where an applicant chooses to have the State 404 Program and ERP authorizations issued concurrently, and project modifications are required for one authorization after the other application has been deemed complete by the Agency, the complete application shall return to an "incomplete" status until all additional required information for such modification is received. No additional fee shall be charged for review of such modifications.

(b) Where an applicant chooses to have the ERP and State 404 Program authorizations issued separately, and modifications to the issued ERP authorization are required as a result of the State 404 Program review process, the fee to modify the ERP permit under Rule 62-330.071, F.A.C., shall apply.

(11) Agency actions under this Chapter are state actions subject to the provisions of Sections 120.569 and 120.57, F.S., except as otherwise provided in Section 373.4146(5), F.S. (See sections 5.1 and 5.3.3 of the 404 Handbook).

(12) An authorization or exemption under this Chapter does not relieve the applicant from the need to obtain any other state, federal, or local authorizations that may be required for the project. (See 404 Handbook section 1.3 for guidance).

(13) Notwithstanding any of the provisions of this Rule, to the extent EPA recognizes or authorizes partial assumption for state 404 programs, nothing in this Chapter would restrict or prohibit the State of Florida from amending the State 404 program, in accordance with federal law, to accommodate partial assumption.

(14) The Department strives to operate a wetlands regulatory program that far exceeds the minimum standards set by federal law and is comprised of professional and knowledgeable staff that make science-based decisions regarding the water resources of the state. To continuously exhibit these qualities, the Department will institute continuous improvement and evaluation measures, including but not limited to:

(a) Partnering with a third-party entity to identify the qualities of a state wetlands regulatory program that exhibits a paragon of excellence, and

(b) Conducting an annual staffing analysis of the State 404 Program.

Rulemaking Authority 373.026(7), 373.043, 373.118, 373.4131, 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.109, 373.4141, 373.4146, 373.421, 373.4211 FS. History – New _____.

62-331.020 Regulated Activities

(1) A permit under this Chapter is not required for the activities described in 40 CFR § 232.3 as of July 1, 2019, incorporated by reference herein (https://flrules.org/Gateway/reference.asp?No=Ref-12041), and in Appendix B of the 404 Handbook, subject to the limitations described therein.

(2) Unless an activity qualifies under subsection (1), above, a permit is required prior to conducting any dredge or fill activities in, on, or over state-assumed waters.

(3) The following types of permits are available:

(a) A general permit, as provided in Rule 62-331.200, F.A.C.; and

(b) An individual permit, as provided in Rule 62-331.050, F.A.C.

Rulemaking Authority 373.026(7), 373.043, 373.118, 373.4131, 373.4135, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.413, 373.4131, 373.4132, 373.4135, 373.4136, 373.4145, 373.4146, 373.416, 373.414, 373.426 FS. History – New _____.

62-331.030 Definitions

Terms used in this Chapter are defined in section 2.0 of the 404 Handbook.

Rulemaking Authority 373.026(7), 373.043, 373.118, 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416 FS. History – New _____.

62-331.040 Procedures for Review and Agency Action on Exemption Requests

(1) A notice to the Agency is not required to conduct an activity that is exempt under subsection 62-331.020(1), F.A.C., except where the activity requires an authorization or notification under Chapter 62-330, F.A.C. Exemptions under Rule 62-330.051, F.A.C., are not applicable to the State 404 Program.

(2) If a person desires Agency verification of qualification to conduct an exempt activity under this Chapter, they shall apply as described in subsections 62-330.050(2) and (3), F.A.C.

(3) The verification of qualification to conduct an exempt activity under this Chapter shall be conducted as described in subsections 62-330.050(4) through (7), F.A.C.

Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.4131, 373.4141, 373.4146(4) FS. History – New _____.

62-331.050 Individual Permits

(1) An individual permit is required for activities within state-assumed waters if they do not qualify for an exemption under subsection 62-331.020(1), F.A.C., or a general permit under Rules 62-331.200 through 62-331.248, F.A.C.

(2) An application for an individual permit shall be:

(a) Prepared in accordance with Rule 62-331.051, F.A.C.;

(b) Submitted in accordance with section 4.3 of the 404 Handbook and section 4.4 of Volume I; and

(c) Reviewed and acted on in accordance with Rule 62-331.052, F.A.C., Rule 62-331.053, F.A.C., and sections 5.0 through 8.5 of the 404 Handbook.

Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.4135, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.413, 373.4131, 373.4135, 373.4136, 373.414, 373.4146, 373.416 FS. History – New _____.

62-331.051 Application for an Individual Permit

Materials to include in an application for an individual permit are described below. Applicants are encouraged to have a pre-application meeting or discussion with Agency staff prior to submitting the application.

(1) The application shall be made on Form 62-330.060(1), "Application for Individual and Conceptual Approval Environmental Resource Permit, State 404 Program Permit, and Authorization to Use State-Owned Submerged Lands" (effective date), including the information required in the applicable Sections A, B, C, D, G, H, and I, incorporated by reference in subsection 62-330.060(1), F.A.C. (https://www.flrules.org/Gateway/reference.asp?No=Ref-12036); or by use of the applicable Agency's equivalent e-application form.

(2) All activities which the applicant plans to undertake which are reasonably related to the same project shall be included in the same permit application. Projects that will take longer than the maximum duration allowed under

federal law to complete shall follow the long-term conceptual planning process in 404 Handbook section 5.3.2. Subsequent state 404 permits to complete the project shall undergo an expedited review process pursuant to subsections 62-331.052(1) and 62-331.060(8), F.A.C., provided there are no material changes in the scope of the project as originally proposed, site and surrounding environmental conditions have not changed, and the applicant does not have a history of noncompliance with the existing permit.

(3) An application for a permit to complete a project that a permittee is unable to complete within the original duration of the permit shall undergo an expedited review process pursuant to subsections 62-331.052(1) and 62-331.060(8), F.A.C., provided there are no material changes in the scope of the project as originally proposed, site and surrounding environmental conditions have not changed, and the applicant does not have a history of noncompliance with the existing permit.

(4) In addition to the information described in subsection (1), above, the applicant will be required to provide additional information as necessary to assist in the evaluation of the application. Such additional information may include environmental data and information on alternate methods and sites as necessary for the preparation of the required environmental documentation. Further, such additional information shall include data and information necessary for purposes of reviewing impacts to state and federal listed species, including compliance with any applicable requirements resulting from consultation with, or technical assistance by, the Florida Fish & Wildlife Conservation Commission, the U.S. Fish & Wildlife Service, and the National Marine Fisheries Service for purposes of the State 404 Program.

Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.4135, 373.414(9), 373.4145, 373.4146(2), 403.061(44), 403.805(1) FS. Law Implemented 373.413, 373.4131, 373.4135, 373.4136, 373.414, 373.4146, 373.416, 668.003, 668.004, 668.50 FS. History – New _____.

62-331.052 Processing of Individual Permit Applications

(1) Within 30 days of receipt of an application for a permit in accordance with Rule 62-331.051, F.A.C., or receipt of any additional information provided by the applicant in response to the Agency's request for additional information, or within 15 days of receipt of an application for a subsequent phase of a project where the first phase was previously permitted in accordance with section 5.3.2 of the 404 Handbook or where a new permit is needed to complete a project that was unable to be completed during the duration of the original permit, the Agency shall

review the application for administrative and technical completeness and shall request any additional information required by the Agency to publish public notice pursuant to Rule 62-331.060, F.A.C., and to determine if the proposed activity meets the conditions for issuance in Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C. The applicant may voluntarily submit a written waiver of the above timeclock requirement to allow the Agency additional time to determine if additional information is required; the Agency is not obligated to accept the waiver or to delay sending the request for additional information.

(a) An application will be considered administratively incomplete if it does not include the information required in subsection 62-331.060(1), F.A.C., and will be considered technically incomplete if additional information is needed to determine if the proposed activity meets the conditions for issuance in Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C. Permit applications shall not be considered technically complete until the ERP review, if required, is complete. This is to satisfy the requirement for reasonable assurance that State water quality standards and coastal zone consistency requirements will be met. (See Rule 62-331.070, F.A.C., and section 5.0 of the 404 Handbook)

(b) The timeframes and other provisions described in Volume I, sections 5.5.3.5 through 5.5.3.7 shall also apply to applications for permits under this Chapter.

(c) The Agency may request additional information as necessary during its review of any information that the Agency receives during the public comment period, at a public meeting, or during federal review.

(2) Within 10 days of the Agency determining that an application is administratively complete pursuant to subsection 62-331.060(1), F.A.C., the Agency shall provide public notice as described in subsection 62-331.060(2), F.A.C. In addition, the Agency shall send a copy of the public notice to EPA for those projects that EPA reviews, in accordance with section 5.2.5 of the 404 Handbook.

(3) For those projects that are subject to federal review in accordance with section 5.2.5 of the 404 Handbook:

(a) If the EPA does not comment on, provide notice to the Agency of its intent to comment on, object to, make recommendations with respect to, or notify the Agency that it is reserving its right to object to, a permit application within 30 days of the date EPA receives the notice, the Agency shall make a final permit decision within 60 days after either the close of the public comment period described in subsection 62-331.060(3), F.A.C., or the project is declared technically complete, whichever occurs later.

1. If the decision is to issue a permit, the permit becomes effective when it is signed by the Agency and the applicant.

2. If the decision is to deny the permit, the Agency will notify the applicant in writing of the reason(s) for denial.

(b) If the EPA intends to comment on, object to, or make recommendations with respect to a permit application, or if EPA does not wish to comment but wishes to reserve the right to object based on any new information brought out by the public during the comment period or at a public meeting, EPA shall notify the Agency of its intent within 30 days of receipt of the public notice or the Agency's notice to EPA of failure to accept the recommendations of an affected state or tribe. Once the Agency is notified by EPA, or if the Agency fails to accept the recommendations of an affected state or tribe and EPA must review the reasons for failing to accept the recommendations, the following procedures shall apply:

1. Subject to subparagraphs 2. through 5., below, the permit shall not be issued until after the receipt of such comments, objections, or recommendations, or within 90 days of EPA's receipt of the notice, whichever occurs first.

2. When the Agency has received an EPA objection or requirement for a permit condition under this section, the Agency shall not issue the permit unless the steps required by the EPA to eliminate the objection or condition the permit have been taken. If the Agency chooses not to perform the required steps, the Agency may still issue an ERP permit under Chapter 62-330, F.A.C., but shall not issue a permit under this Chapter. In such a case, the applicant is responsible for obtaining any necessary authorizations under section 404 of the CWA from the Corps.

3. Within 90 days after Agency receipt of an objection or a requirement for a permit condition from the EPA, the Agency or any interested party may request that the EPA hold a public meeting on the objection or requirement. EPA shall conduct a public meeting if requested by the Agency, or if warranted by significant public interest based on requests received.

4. If EPA does not hold a public meeting under subparagraph 3., above, the Agency shall, within 90 days of receipt of the objection or requirement for a permit condition, either issue the permit revised to satisfy EPA's objections or notify EPA of its intent to deny the permit.

5. If EPA holds a public meeting under subparagraph 3., above, EPA shall reaffirm, modify, or withdraw the objection or requirement for a permit condition, and notify the Agency of that decision.

6. If EPA holds a public meeting, the Agency shall have 30 days after EPA gives the Agency notice of its decision under subparagraph 4., above, to take one of the following actions:

a. If EPA has withdrawn the objection or requirement for a permit condition, and the application is technically complete, the Agency may issue the permit; or

b. If EPA has not withdrawn the objection or requirement for a permit condition, the Agency shall do one of the following:

(I) Issue a permit that includes the required permit condition and/or otherwise satisfies EPA's objection;

(II) Notify EPA of its intent to deny the permit; or

(III) Notify EPA and the applicant that the Agency intends to take no action, in which case, the Corps shall process the section 404 authorization.

Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.4135, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.042, 373.409, 373.413, 373.4131, 373.4132, 373.4135, 373.4136, 373.414, 373.4141, 373.4142, 373.4145, 373.4146, 373.416, 373.426, 373.429, 704.06 FS. History – New _____.

62-331.053 Additional Conditions for Issuance of Individual Permits

In addition to the conditions in Rules 62-330.301 and 62-330.302, F.A.C., individual permits under this Chapter are subject to the following conditions:

(1) No dredge or fill activity shall be permitted if there is a practicable alternative to the proposed activity which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. The Agency shall require the applicant to submit an alternatives analysis completed in accordance with the provisions below. Guidance for completing an alternatives analysis is in Appendix C of the 404 Handbook.

(a) For the purpose of this condition, practicable alternatives shall include, but shall not be limited to:

1. Activities which do not involve dredging or filling in state-assumed waters;

2. Locations where dredge or fill activities would have less adverse impact than the proposed project location, so long as the alternative does not have other significant adverse environmental consequences.

(b) An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics considering overall project purposes. If it is otherwise a practicable alternative, an

area not presently owned by the applicant which could reasonably be obtained, utilized, expanded, or managed to fulfill the basic purpose of the proposed activity may be considered.

(c) Where the dredge or fill activity proposed within a special aquatic site does not require access or proximity to or siting within the special aquatic site to fulfill its basic purpose (i.e., is not "water dependent"), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a dredge or fill activity is proposed within a special aquatic site, all practicable alternatives to the proposed activity which do not involve dredging or filling within a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.

(d) To the extent that practicable alternatives have been identified and evaluated under the Coastal Zone Management Program, a CWA section 208 program, or other planning process, such evaluation shall be considered by the Agency as part of the consideration of alternatives under this section. Where such evaluation does not contain all information required under this section, the additional information shall be provided to the Agency for review.

(2) The activity shall not significantly adversely affect the aesthetics of the aquatic ecosystem as they apply to the quality of life enjoyed by the general public and property owners as described in section 8.3.2 of the 404 Handbook.

(3) No permit shall be issued for the following:

(a) When the project is inconsistent with the requirements of this Chapter and the 404 Handbook, including when the project:

1. Causes or contributes to violations of any applicable State water quality standard, except when temporarily within a mixing zone proposed by the applicant and approved by the Agency;

2. Causes or contributes to violations of any applicable water quality standard within other states or Tribal lands;

3. Violates any applicable toxic effluent standard or prohibition under section 307 of the CWA, 33 U.S.C. § 1317 (2018), incorporated herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12065), or state law;

4. Jeopardizes the continued existence of endangered or threatened species, or results in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of Interior or Commerce, as appropriate, to be a critical habitat for endangered or threatened species. Compliance with any requirements resulting from consultation with, or technical assistance by, the Florida Fish & Wildlife Conservation Commission,

the U.S. Fish & Wildlife Service, and the National Marine Fisheries Service for purposes of the State 404 Program, and review, as it pertains to endangered or threatened species, by the U.S. Environmental Protection Agency as described in subsection 62-331.052(2), F.A.C., shall be determinative for purposes of evaluating violations of this subparagraph. If an exemption has been granted by the Endangered Species Committee, the terms of such exemption shall apply in lieu of this subparagraph;

5. Violates any requirement imposed by the Secretary of Commerce to protect any area designated as a marine sanctuary.

6. Causes or contributes to significant degradation of wetlands or other surface waters. Effects contributing to significant degradation considered individually or collectively, include:

i. Significant adverse effects on human health or welfare, including but not limited to, effects on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites;

ii. Significant adverse effects on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their by-products outside of the project site through biological, physical, and chemical processes;

iii. Significant adverse effects on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or

iv. Significant adverse effects on recreational, aesthetic, and economic values.

(b) When appropriate and practicable steps have not been taken to minimize potential adverse impacts of the activity on the aquatic ecosystem;

(c) When there does not exist sufficient information to make a reasonable judgement as to whether the proposed activity will comply with the requirements of this Chapter;

(d) When the EPA has objected to issuance of the permit and the objection has not been resolved, or placed a requirement for a permit condition that has not been addressed, as described in paragraph 62-331.052(3)(b), F.A.C.;

(e) When the proposed dredge or fill activity would be in an area which has been prohibited, withdrawn, or denied as a disposal site by the EPA under section 404(c) of the CWA, or when the activity would fail to comply with a restriction imposed thereunder;

(f) If the Corps determines, after consultation with the Secretary of the Department in which the Coast Guard is operating, that anchorage and navigation of any of the navigable waters would be substantially impaired.

Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.4135, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.4146 FS. History – New _____.

62-331.054 General Conditions for Individual Permits

(1) Individual permits shall contain the general conditions for individual permits in subsection 62-330.350(1), F.A.C., as applicable, and any specific conditions necessary to assure that the activities will be conducted in compliance with this Chapter, and in a manner which minimizes adverse impacts upon the physical, chemical, and biological integrity of wetlands or other surface waters, such as mitigation requirements and protection measures for listed species or historical resources.

(2) Individual permits shall contain the following conditions in addition to those described in (1), above:

(a) The permittee shall comply with all conditions of the permit, even if that requires halting or reducing the permitted activity to maintain compliance. Any permit violation constitutes a violation of Part IV of Chapter 373, F.S., and this Chapter, as well as a violation of the CWA.

(b) The permittee shall take all reasonable steps to prevent any unauthorized dredging or filling in violation of this permit.

(c) The permittee shall timely notify the Agency of any expected or known actual noncompliance.

(d) Upon Agency request, the permittee shall provide information necessary to determine compliance status, or whether cause exists for permit modification, revocation, or termination.

(e) Inspection and entry. The permittee shall allow the Agency, upon presentation of proper identification, at reasonable times to:

1. Enter upon the permittee's premises where a regulated activity is located or where records must be kept under the conditions of the permit,

2. Have access to and copy any records that must be kept under the conditions of the permit,

3. Inspect operations regulated or required under the permit, and

4. Sample or monitor, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.4135, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.042, 373.409, 373.413, 373.4131, 373.4132, 373.4135, 373.4136, 373.414, 373.4141, 373.4142, 373.4145, 373.4146, 373.416, 373.426, 373.429, 704.06 FS. History – New _____.

62-331.060 Public Notice

(1) The Agency shall provide public notice, as described in subsection (2), below, within 10 days of the following: agency determination that an application for an individual permit or major modification is administratively complete; Agency notification to a permittee of revocation or suspension of a permit; and issuance of an emergency field authorization. The Agency shall provide public notice 30 days prior to any scheduled public meeting for such projects. An administratively complete application, as defined and described in sections 2.0 and 8.1, respectively, of the 404 Handbook, shall include the following information:

(a) Name, address, and telephone number of the applicant;

(b) Name(s) and address(es) of owners of property adjoining the property where the activity is proposed to occur;

(c) Self-addressed, stamped envelopes and/or email addresses for each adjoining property owner. These will be used by the Agency to send the public notice. Do not include a return address; it will be added by the Agency;

(d) A complete description of the activity including necessary drawings, sketches, or plans sufficient for public notice; the location, purpose, and intended use of the proposed activity; the long-term conceptual plan described in 404 Handbook, section 5.3.2, if applicable; scheduling of the activity; the location and dimensions of adjacent structures; and a list of authorizations required by other agencies including federal, interstate, state, or local agencies for the work, including all approvals received or denials already made;

(e) A description of the type, composition, source, and quantity of the material to be dredged or used as fill; construction methods; and the site and plans for disposal of any dredged material including a description of spoil cells, dredged material management areas (DMMAs), and final disposal plans if the dredged material is not proposed to remain onsite;

(f) A summary of proposed wetland and other surface water impacts and compensatory mitigation including acres, habitat type, and Uniform Mitigation Assessment Method (UMAM) score developed pursuant to Chapter 62-345, F.A.C., for each assessment area;

(g) The alternatives analysis required by subsection 62-331.053(1), F.A.C.; and

(h) A certification that all information contained in the application is true and accurate and acknowledging awareness of penalties for submitting false information.

(i) Any other information relevant to the project that would significantly assist the public and commenting agencies in reviewing, understanding, and commenting on the proposed project, including information needed for review of impacts to state or federal listed species.

(2) Public notice shall be prepared in accordance with section 5.3.1 of the 404 Handbook and provided as follows:

(a) The Agency shall mail and/or email the notice to the following parties:

1. The applicant;

2. Any other agency with jurisdiction over the activity or the project site, whether or not the agency issues a permit;

3. Owners of property adjoining the property where the regulated activity is proposed or is permitted to occur;

4. Any State or tribe whose waters may be affected by the proposed or permitted activity; and

5. All persons, other than those listed above, who have specifically requested copies of public notices. The Agency may require the use of an existing online notification system to request and receive such notices, except where the requestor asks to be notified by an alternative method because of a technical or financial hardship.

6. The Seminole Tribe of Florida Environmental Resource Management Department (ERMD) for any activity that is within six miles of the Seminole Tribe of Florida's Big Cypress or Brighton Reservations; within two miles of the Seminole Tribe of Florida's Immokalee, Lakeland, or Fort Pierce Reservations; within one mile of the Seminole Tribe of Florida's Tampa, Coconut Creek, or Hollywood Reservations; within the Seminole Tribe's reserved rights areas, including but not limited to: within Big Cypress National Preserve; within Big Cypress National Preserve addition lands; within Everglades National Park; within Rotenberger Wildlife Management Area; or within Water Conservation Area 3-A.

7. The Seminole Tribe of Florida's Tribal Historic Preservation Office (THPO) for activities in the State of Florida.

8. The Miccosukee Tribe of Indians of Florida for any activity that is within two miles of the Miccosukee Federal Reservation; Miccosukee Reserve Area; Krome Avenue, Dade Corners, Cherry Ranch, or Sherrod Ranch Reservations; and Coral Way, Lambick, or Sema Trust Properties. Also for any activity within the Miccosukee

Tribe's reserved rights areas, including but not limited to: within Big Cypress National Preserve; within Big Cypress National Preserve addition lands; within Everglades National Park; within Rotenberger Wildlife Management Area; or within Water Conservation Area 3-A.

(b) Notice shall be published on the Agency website.

(c) The notice provided in subsection (a) or (b), above, may be combined with notice required for ERP permits or certain activities on sovereign submerged lands pursuant to Volume I, section 5.5.2.3, provided the provisions of this section are met.

(3) From the date of publication, interested parties may express their views concerning the permit application, modification, revocation, or suspension for a period of:

(a) 30 days; or

(b) 15 days for the following projects:

1. Mosquito control activities including rotary ditching;

2. Erosion control activities not to exceed 0.2 acre of fill;

3. Restoration efforts required by the Agency that do not exceed 0.5 acre of dredge or fill activities into state-assumed waters;

4. The placement of fill material in freshwater wetlands for residential development, not to exceed 0.2 acre, except within the following areas:

a. Wetlands in or adjacent to Outstanding Florida Waters (OFWs);

b. Wetlands in or adjacent to National Parks, National Wildlife Sanctuaries, National Preserves, and National Marine Sanctuaries;

c. Wetlands in Areas of Critical State Concern;

d. Timicuan Ecological and Historical Preserve in Duval County;

e. Golden Gate Estates, Collier County, south of Alligator Alley;

f. The Florida Keys.

(c) The public notice comment period shall automatically be extended to the close of any public meeting, if one is held. The presiding officer may also extend the comment period at the public meeting.

(4) The Agency may hold a public meeting for a proposed project, modification, revocation, or suspension if it is determined that there is a significant degree of public interest in the application. A public meeting may also be

held at the discretion of the Agency, when the Agency determines a public meeting may be useful to a decision on the permit application. Interested parties may request a public meeting during the comment period in subsection (3), above.

(a) Any request for a public meeting shall be in writing and shall state the nature of the issues proposed to be raised at the public meeting.

(b) The Agency shall provide notice of a public meeting at least 30 days prior to the scheduled public meeting date.

(c) Any person may submit oral or written statements or data concerning the permit application at the public meeting. Public meetings shall be reported verbatim. Copies of the record of proceedings may be obtained from the Agency or the reporter of such meeting. A copy of the transcript (or, if none is prepared, a recording of the proceedings) shall be made available for public inspection at the local Agency office.

(5) Any state whose waters may be affected by the proposed activity, or any tribe whose waters or resources, including historical resources, may be affected by the proposed activity, may submit written comments and suggest permit conditions within the public notice comment period provided in subsection (3), above. If the Agency does not accept the recommendations of the state or tribe, the Agency shall notify the state or tribe and EPA in writing, prior to permit issuance, of the Agency's failure to accept the recommendations, with the reasons for so doing. The application shall then be subject to the review process in paragraph 62-331.052(3)(b), F.A.C.

(6) The Agency shall consider all comments received in response to the public notice, and public meeting if a meeting is held. All comments, as well as the record of any public meeting, shall be made part of the official record on the application.

(7) Revocation or suspension of permits shall be subject to the review process in subsection 62-331.052(3), F.A.C.

(8) Notice for subsequent phases of a long-term project permitted in accordance with section 5.3.2 of the 404 Handbook, or for permits to complete a project that was unable to be completed during the duration of the original permit, shall include only those changes not considered during permitting of a previous phase. Where there are no changes to the project, the notice shall provide the public an opportunity to submit comments, materials, or evidence pertaining to identification of material site changes or potential noncompliance.

Rulemaking Authority 373.026(7), 373.043, 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.4146 FS. History – New _____.

62-331.070 Water Quality and Coastal Zone Consistency Review

(1) Compliance with applicable state water quality standards shall be required for issuance of a permit.

(2) Compliance with the Coastal Zone Management Program shall be required for issuance of a permit.

(3) To ensure compliance with subsections (1) and (2), above, a verification of exemption or permit under this Chapter shall not be issued unless the activity is exempt under Chapter 62-330, F.A.C., or the applicable ERP under Chapter 62-330, F.A.C., is issued.

Rulemaking Authority 373.026(7), 373.043, 373.118, 373.4131, 373.4145, 380.23(4), 403.0877, 403.805(1) FS. Law Implemented 373.026(7), 373.109, 373.117, 373.118, 373.413, 373.4131, 373.4141, 373.4145, 373.4136, 373.4146, 373.416, 373.426, 373.428, 380.23, 403.0877 FS. History – New _____.

62-331.080 Modification, Suspension, or Revocation of Permits

Modification of permits shall be conducted in accordance with subsections 62-330.315(1) through (3), F.A.C., and section 6.2 of Volume I, as applicable. Suspension or revocation of permits shall be conducted in accordance with Section 373.429, F.S. In addition, modification, suspension, or revocation of permits is subject to the following:

(1) The following shall be processed as minor modifications. Any activity not covered below shall be processed as a major modification:

(a) Correction of typographical errors;

(b) Requiring more frequent monitoring or reporting by permittee;

(c) Changing ownership or operational control of a project or activity where the Agency determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Agency;

(d) Minor modifications of project plans that do not significantly change the character, scope, and/or purpose of the project or result in significant change in environmental impact. The Agency shall use the factors in section 6.2.1(d) of Volume I, as applicable, to determine whether the modification will be considered minor;

(e) Extending the term of an individual permit to the amount of time reasonably needed to complete the project, but not to exceed the maximum duration allowed under federal law and so long as the modification does not result in any increase in the amount of material to be dredged or used as fill.

(2) The Agency shall reevaluate the circumstances and conditions of a permit at any time, either on its own motion or at the request of the permittee or a third party and determine whether to initiate action to modify, suspend, or revoke a permit if sufficient cause exists. Sufficient cause exists when any one of the following factors are present:

(a) Permittee's noncompliance with any of the terms or conditions of the permit;

(b) Permittee's failure in the application or during the permit issuance process to fully disclose all relevant facts or the permittee's misrepresentation of any relevant facts at the time;

(c) Information that activities authorized by a general permit are having more than minimal individual or cumulative adverse effect on the environment, or that the permitted activities are more appropriately regulated by individual permits;

(d) Circumstances relating to the authorized activity have changed since the permit was issued and changed permit conditions or temporary or permanent cessation of any dredge or fill activity controlled by the permit are justified;

(e) Any significant information relating to the activity authorized by the permit if such information was not available at the time the permit was issued and would have justified the imposition of different permit conditions or denial at the time of issuance;

(f) Revisions to applicable statutory or regulatory authority, including toxic effluent standards or prohibitions or water quality standards.

(3) Extensions of permits.

(a) Individual permits shall not be extended beyond the maximum duration allowed under federal law.

(b) General permits shall not be extended.

(4) Public notice.

(a) Minor modifications shall not be subject to the public notice requirements in Rule 62-331.060, F.A.C.

(b) Major modifications shall be subject to the public notice requirements in Rule 62-331.060, F.A.C. However, only the conditions subject to modification shall be re-opened.

(c) Revocation and suspension of permits shall be effective upon the permittee's receipt of notification from the Agency of such revocation or suspension. Public notice of the revocation or suspension shall be made in accordance with Rule 62-331.060, F.A.C.

Rulemaking Authority 373.026(7), 373.043, 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.4146, 373.429 FS. History – New_____.

62-331.090 Duration of Permits

Unless revoked or otherwise modified, the duration of a permit under this Chapter is:

(1) General permits shall be effective for a fixed term not to exceed five years as provided in subsection 62-331.200(5), F.A.C.

(2) The duration of individual permits shall be specified in each permit and shall not exceed the maximum timeframe allowable under federal law and reasonably necessary to complete the project.

Rulemaking Authority 373.026(7), 373.043, 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.4146(5) FS. History – New_____.

62-331.100 Transfer of Permit Upon Change of Ownership or Control

(1) Transfer of an individual permit shall be in accordance with Rule 62-330.340, F.A.C. The phrase "under this Chapter" shall mean Chapter 62-331, F.A.C.

(2) If the permittee sells the property associated with a general permit verification, the permittee shall transfer the general permit verification to the new owner by submitting a completed Form 62-331.100(1) – "Transfer of State 404 Program General Permit Verification", incorporated by reference herein (effective date) (https://flrules.org/Gateway/reference.asp?No=Ref-12042), within 30 days of the sale, to the Agency that processed the original notice.

Rulemaking Authority 373.026(7), 373.043, 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.4131, 373.4135, 373.4136, 373.4145, 373.4146, 373.416, 373.426 FS. History – New_____.

62-331.110 Emergency Field Authorizations

(1) The Agency shall issue an emergency field authorization for dredge or fill activities to abate an emergency condition before a permit could be issued or modified under this Chapter. "Emergency conditions" are defined as

those that pose an imminent or existing serious threat or danger and require immediate action to protect the public health, safety, or welfare, or the water resources of the Agency, including the health of aquatic and wetland-dependent species; a public water supply; or recreational, commercial, industrial, agricultural or other reasonable uses. Carelessness or the lack of planning on the part of an applicant shall not be sufficient grounds to warrant the granting of an emergency field authorization.

(2) The entity requesting an emergency field authorization shall complete an "State 404 Program Emergency Field Authorization", Form 62-331.110(1) (effective date), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12066). A copy of this form may be obtained from the Agency, as described in subsection 62-331.010(8), F.A.C. The activity authorized by the emergency field authorization may commence upon written approval by the Agency's field representative. The recipient of an emergency field authorization is responsible for compliance with all the terms and conditions of the authorization.

(3) Any emergency field authorization shall be limited to the duration of time (typically no more than 90 days) required to complete the authorized emergency action.

(4) The emergency field authorization may be terminated at any time, effective immediately upon the Agency notifying the permittee of the termination either orally or in writing, if the Agency determines that termination is necessary to protect human health or the environment. If oral termination is given, the Agency shall follow up with a written termination within five business days.

(5) Notice of the emergency field authorization shall be published and public comments solicited in accordance with Rule 62-331.060, F.A.C., as soon as possible, but no later than 10 days after the issuance date.

(6) If required by a condition in the emergency field authorization, the permittee shall, within 90 days of issuance of the emergency field authorization, apply for a permit. Such permit, if issued, shall, where applicable, include requirements for restoration of aquatic resources or modification of the work completed under the emergency field authorization to comply with the provisions of this Chapter.

(7) The Agency shall consult with EPA, the Corps, the tribes, FWC, FWS, and NMFS, as applicable, about issuance of an emergency permit as soon as possible after the emergency permit is requested, but no later than the day of issuance of the emergency permit.

Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.4145, 373.4146, 403.805(1) FS. Law Implemented 373.119, 373.413, 373.4131, 373.4145,373.4146, 373.416, 373.426, 373.439 FS. History – New

62-331.120 Fees

There shall be no additional fee charged for verifications, notices, applications, or permits under this Chapter.

Rulemaking Authority 373.026(7), 373.043, 373.118, 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.109, 373.4146 FS. History – New

62-331.130 Compensatory Mitigation

Compensatory mitigation shall be considered only after the requirements of Rule 62-331.053(1), F.A.C., have been met. Compensatory mitigation required for authorizations or compliance actions under this Chapter shall be conducted in accordance with section 10.3 of Volume I, section 8.5 of the 404 Handbook, and this section:

(1) Mitigation Hierarchy. The preferential hierarchy in the 404 Handbook section 8.5.1 shall be followed when compensatory mitigation is required for authorizations and compliance actions.

(2) Mitigation proposals other than the purchase of mitigation bank or in-lieu fee program credits shall include an adaptive management plan. The plan shall include information about the party or parties responsible for implementing adaptive management measures, including the information required in Volume I, section 10.3.1.2.1.

(3) Federal credits from mitigation banks or in-lieu fee programs approved by the Corps shall be accepted by the Agencies to offset impacts for permits when the number and resource type of credits available are appropriate to offset impacts.

(4) Mining reclamation activities may be considered appropriate compensatory mitigation for impacts from mining projects undertaken pursuant to Chapter 378, F.S., and rules promulgated thereunder, if they maintain or improve the water quality and the function of biological systems present at the site prior to the commencement of mining activities, subject to the following additional requirements:

(a) Additional compensatory mitigation shall be required if the Agency determines that the onsite reclamation activities will not fully offset the regulated activity's adverse impacts.

(b) Section 373.414(6)(b), F.S., and paragraph 62-345.600(1)(b), F.A.C., pertaining to time lag for phosphate and heavy minerals mines, shall not apply to compensatory mitigation for permits or compliance actions.

(c) Additional compensatory mitigation, if required, shall be subject to the mitigation hierarchy in subsection (1), above.

(5) Compensatory mitigation for Florida Department of Transportation (FDOT) projects, proposed in accordance with Section 373.4137, F.S., shall be consistent with this Chapter to be used for State 404 Program permits.

(6) Compensatory mitigation for mining in the Miami-Dade County Lake Belt Area requiring a State 404 permit conducted in accordance with Section 373.41492, F.S. shall be consistent with this Chapter to be used for State 404 Program permits. Activities authorized by the permit cannot commence until the specific compensatory mitigation project for which the mitigation funds will be used are identified and approved by the Lake Belt Mitigation Committee.

Rulemaking Authority 373.026(7), 373.043, 373.414, 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.413, 373.4131, 373.4132, 373.4135, 373.4136, 373.414, 373.4144, 373.4145, 373.4146, 373.416 FS. History – New_____.

62-331.140 Mitigation Banks and In-Lieu Fee Programs

(1) Mitigation banks and in-lieu fee program instruments shall be reviewed and processed by the Corps in accordance with federal law. However, the Agency shall be responsible for issuing any permits required for dredge or fill activities needed to implement the mitigation bank or in-lieu fee program within state-assumed waters.

(2) Federal mitigation bank and in-lieu fee credits shall be acceptable to provide compensatory mitigation for State 404 Program permits, where appropriate. (See 404 Handbook, section 8.5.1).

(3) A designated representative of the Agency shall serve as a member of the Interagency Review Team.

Rulemaking Authority 373.026(7), 373.043, 373.4135, 373.414, 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.413, 373.4131, 373.4132, 373.4135, 373.4136, 373.4146 FS. History – New

62-331.160 Use of Formal Determinations

A valid formal determination completed in accordance with subsection 62-330.201(2), F.A.C., and Volume I, section 7.2 shall be accepted in an application for a permit.

Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.421(2), 373.4146(2), 403.805(1), 403.0877 FS. Law Implemented 373.026, 373.4131, 373.4146, 373.421(2), 373.441 FS. History – New_____.

62-331.200 Policy and Purpose of General Permits

(1) The general permits apply to those activities that do not otherwise qualify for an exemption under subsection 62-331.020(1), F.A.C., and that qualify under the general permit requirements in this section and within the specific general permit for which notice of intent to use a general permit is given.

(2) General permits authorize activities that, if conducted consistent with the permit requirements, will cause only minimal individual and cumulative adverse environmental effects. Compensatory mitigation shall be required, when necessary, to offset impacts authorized under a general permit, unless the general permit specifically states otherwise. Any required compensatory mitigation must comply with provisions in Rule 62-331.130, F.A.C., and section 8.5 of the 404 Handbook.

(3) If required, notice of intent to use the general permit shall be given pursuant to subsection 62-330.402(1), F.A.C., and section 4.3 of the 404 Handbook, and acted upon in accordance with subsection 62-330.402(4), F.A.C., section 5.0 of the 404 Handbook, and this section. Submittal of a notice of intent to the Agency is required if:

(a) Indicated in the general permit;

(b) The activity requires a notification or authorization under Chapter 62-330, F.A.C.;

(c) The project is in state-assumed waters accessible to any state or federal listed species;

(d) The activity is adjacent to the river segments identified in the Nationwide Rivers Inventory: https://www.nps.gov/ncrc/programs/rtca/nri/index.html;

(e) The activity is in the Florida Keys;

(f) The project is adjacent to a federal project;

(g) The project is adjacent to or may impact Tribal lands or Tribal Trust Resources;

(h) The project is within six miles of the Seminole Tribe of Florida's Big Cypress or Brighton Reservations; within two miles of the Seminole Tribe of Florida's Immokalee, Lakeland, or Fort Pierce Reservations; within one mile of the Seminole Tribe of Florida's Tampa, Coconut Creek, or Hollywood Reservations; within the Seminole Tribe's reserved rights areas, including but not limited to: within Big Cypress National Preserve; within Big Cypress National Preserve addition lands; within Everglades National Park; within Rotenberger Wildlife Management Area; or within Water Conservation Area 3-A;

(i) The project is within two miles of the Miccosukee Federal Reservation; Miccosukee Reserve Area; Krome Avenue, Dade Corners, Cherry Ranch, or Sherrod Ranch Reservations; and Coral Way, Lambick, or Sema Trust Properties. Also for any activity within the Miccosukee Tribe's reserved rights areas, including but not limited to:

within Big Cypress National Preserve; within Big Cypress National Preserve addition lands; within Everglades National Park; within Rotenberger Wildlife Management Area; or within Water Conservation Area 3-A; or

(j) The State Historic Preservation Office (SHPO) determines that the Florida Master Site File (FMSF) includes a historic property within 50 meters of the project area that is listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places. To obtain this determination, any person who intends to use a general permit that does not otherwise require notice shall contact the FMSF to conduct a historic properties search. The applicant shall provide the FMSF with a description of project area, project area map, and Section/Township/Range and/or latitude/longitude coordinates to sitefile@dos.myflorida.com or contact the FMSF office at (850) 245-6440.

1. Where the FMSF Report for the property (or all properties if more than one) shows the SHPO Evaluation ('SHPO Eval' column) to be "Not Eligible" and also shows the property(ies) are not listed or proposed for listing on the National Register of Historic Places ('NR Status' column), and notice is not otherwise required under this section, then submittal of a notice of intent is not required.

2. Notice is required if the applicant has knowledge of a historic property that is listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties.

(4) Each permittee who receives a general permit verification letter under this Chapter must submit a completed Form 62-331.200(1) – "Certification of Compliance with a State 404 Program General Permit", incorporated by reference herein (effective date) (https://www.flrules.org/Gateway/reference.asp?No=Ref-12067), within 30 days of completion of the authorized activity, or the implementation of any required compensatory mitigation, whichever is later.

(5) General permits shall expire five years from the date the general permit becomes effective in rule. If the general permits are not renewed before the expiration date, an individual permit will be required for the activities.

(6) The Agency shall have discretionary authority to require any person authorized under a general permit to apply for an individual permit where sufficient cause exists. Sufficient cause shall include a likelihood that the project will cause more than minimal adverse environmental effects to the aquatic environment; including individual, secondary, and cumulative impacts; and the ability to comply with the conditions in Rule 62-331.201, F.A.C., below.

(7) The Agency may administer, upon agreement with the Corps, Corps regional general permits that are still effective upon the date of assumption for projects within assumed waters, where appropriate, until the date that they expire. The Department shall keep a list of any regional general permits administered by the state after the date of assumption at the following website [address].

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1), FS. Law Implemented 373.118, 373.4131, 373.414, 373.4144, 373.4145, 373.4146, 373.416, 373.426 FS. History – New _____.

62-331.201 Conditions for General Permits

(1) General permits shall be subject to the conditions in subsections (2) and (3), below, and the general conditions for all general permits in Rule 62-330.405, F.A.C., except subsections 62-330.405(7) and (10), F.A.C. The Agency may revise the general conditions in Rule 62-330.405, F.A.C. to include references to applicable rules under this Chapter, as necessary.

(2) When a project requires submittal of a notice of intent to use a general permit, the Agency shall impose specific conditions as necessary to assure that the activities will be conducted in compliance with this Chapter, and in a manner which minimizes adverse impacts upon the physical, chemical, and biological integrity of wetlands or other surface waters, such as mitigation, monitoring, reporting, or recordkeeping requirements and protection measures for listed species or historical resources.

(3) In addition, general permits under this Chapter are subject to the following conditions:

(a) Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing shall be designed and constructed to minimize adverse effects to aquatic life movements.

(b) Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

(c) Migratory Bird Breeding Areas. Activities in state-assumed waters that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

(d) Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by general permits in Rule 62-331.211 or 62-331.244, F.A.C., or is a shellfish seeding or habitat restoration activity authorized by the general permit in Rule 62-331.225, F.A.C.

(e) Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or fill must be free from toxic pollutants in toxic amounts as listed in section 307 of the CWA, which is incorporated by reference in subparagraph 62-331.053(3)(a)3., F.A.C., or state law.

(f) Water Supply Intakes. No activity may occur within 1000 feet of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

(g) Fills Within 100-year Floodplains. The activity shall comply with applicable FEMA-approved state or local floodplain management requirements.

(h) Single and Complete Project. The activity must be a single and complete project. The same general permit cannot be used more than once for the same single and complete project unless otherwise stated within the general permit. (See 404 Handbook, section 3.2.1).

(i) Wild and Scenic Rivers. No general permit activity may occur in a component of the National Wild and Scenic Rivers System, or in a river officially designated by Congress as a study river for possible inclusion in the System while the river is in an official study status, unless the appropriate federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(j) Tribal Rights. No general permit activity may cause more than minimal adverse effects on tribal rights (including treaty rights, settlement rights, or rights reserved under state or federal law), protected tribal resources (including cultural or burial resources off reservation), tribal waters, or to tribal lands.

(k) Listed species. No activity is authorized under any general permit which is likely to directly or indirectly jeopardize the continued existence of an endangered or threatened species or a species proposed for such designation, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any general permit which may affect a listed species or critical habitat, unless the

Agency has consulted with, or been provided technical assistance by the Florida Fish & Wildlife Conservation Commission, the U.S. Fish & Wildlife Service, and the National Marine Fisheries Service under their respective authorities and appropriate measures to address the effects of the proposed activity have been implemented or are required as a specific condition to the general permit.

(l) Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 – 712 (2018), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12068), and the Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668 – 668(d) (2018), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12069). The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether incidental take permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

(m) Historic Properties. In cases where the Agency determines, based on information from SHPO, that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized until a determination of "no effect" or "no adverse effect" is provided by SHPO.

(n) Manatees. In waters that are accessible to manatees, the permittee shall follow the "Standard Manatee Conditions for In-Water Work (2011)", incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12070).

(o) Sea turtles, smalltooth sawfish, Gulf sturgeon, or shortnose sturgeon. In waters that are accessible to these species, the permittee shall follow the "Sea Turtle and Smalltooth Sawfish Construction Conditions" (March 23, 2006), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12071).

(p) Use of Multiple General Permits. The use of more than one general permit under this Chapter for a single and complete project is prohibited, except when specified within a specific general permit, or when the acreage loss of state-assumed waters authorized by the general permits does not exceed the acreage limit of the general permit with the highest specified acreage limit.

(q) Transfer of General Permit Verifications. If the permittee sells the property associated with the general permit verification, the permittee shall transfer the general permit verification to the new owner by submitting a

completed Form 62-331.100(1) – "Transfer of State 404 Program General Permit Verification" (effective date), incorporated by reference in subsection 62-331.100(2), F.A.C., within 30 days of the sale, to the Agency that processed the original notice.

(r) Compliance Certification. Each permittee who receives a general permit verification letter under this Chapter must submit a completed Form 62-331.200(1) – "Certification of Compliance with a State 404 Program General Permit" (effective date), incorporated by reference in subsection 62-331.200(4), F.A.C., within 30 days of completion of the authorized activity, or the implementation of any required compensatory mitigation, whichever is later.

(s) Activities Affecting Structures or Work Built by the United States. If an activity also requires permission from the Corps pursuant to 33 U.S.C. § 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project, the prospective permittee is responsible for obtaining such permission separately from the Corps prior to commencing activities authorized by the general permit.

(t) If during the ground disturbing activities and construction work within the permit area, there are archaeological or cultural materials encountered which were not the subject of a previous cultural resources assessment survey or to which such impacts were not anticipated, including but not limited to pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement; the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Agency within the same business day. The Agency shall then notify the State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) or tribe when the interested tribe does not have a THPO, to assess the significance of the discovery and devise appropriate actions.

(u) Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries or effects to historic properties as referenced in accordance with condition (t), above, and if deemed necessary by the SHPO, or THPO(s), Tribes, or Agency. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Agency may modify, suspend, or revoke the permit in accordance with Rule 62-331.080, F.A.C. Such activity shall not resume without written authorization from the

SHPO and THPO(s), or tribe when the interested tribe does not have a THPO, concerning potential effects to cultural resources or historic properties for finds under their jurisdiction, and from the Agency.

(v) In the event that unmarked human remains are identified, they shall be treated in accordance with Section 872.05, F.S. All work and ground-disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Agency, and State Archaeologist within the same business day. The Agency shall then notify the appropriate SHPO and THPO(s) and appropriate tribes and other appropriate consulting parties. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Agency may modify, suspend, or revoke the permit in accordance with Rule 62-331.080, F.A.C. Such activity shall not resume without written authorization from the medical examiner, State Archaeologist, and from the Agency. Additionally, if the unmarked remains were identified on federal lands, or lands where the Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa – 470mm (2018), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12072), or the Native American Graves Protection Repatriation 25 U.S.C. §§ 3001-3013 (2018), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12073), applies, such activity shall not resume without written authorization from the SHPO, the appropriate THPO(s), and the federal land manager.

(w) Noncompliance. The permittee shall timely notify the Agency of any expected or known actual noncompliance.

(x) Inspection and entry. The permittee shall allow the Agency, upon presentation of proper identification, at reasonable times to:

1. Enter upon the permittee's premises where a regulated activity is located or where records must be kept under the conditions of the permit,

2. Have access to and copy any records that must be kept under the conditions of the permit,

3. Inspect operations regulated or required under the permit, and

4. Sample or monitor, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

(y) The permittee shall comply with all conditions of the permit, even if that requires halting or reducing the permitted activity to maintain compliance. Any permit violation constitutes a violation of Part IV of Chapter 373, F.S., and this Chapter, as well as a violation of the CWA.

(z) The permittee shall take all reasonable steps to prevent any unauthorized dredging or filling in violation of this permit.

(aa) Upon Agency request, the permittee shall provide information necessary to determine compliance status, or whether cause exists for permit modification, revocation, or termination.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.210 General Permit for Maintenance or Removal

(1) This general permit authorizes the following activities:

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR § 330.3 as of July 1, 2019, incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12074), provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized.

(b) The removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project.

(c) The removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill.

(d) The repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the Agency, provided the permittee can demonstrate funding, contract, or other similar delays.

(e) The removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built but cannot extend farther than 200 feet in any direction from the structure. This 200-foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no state-assumed waters unless otherwise specifically approved by the Agency under separate authorization.

(f) Temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and fill, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated.

(2) This general permit does not authorize:

(a) Beach restoration.

(b) New stream channelization or stream relocation projects.

(c) Maintenance or removal of projects that capture and store water, such as Dispersed Water Management Projects (DWMPs).

(3) Notice of intent to use this general permit is required for activities authorized by paragraph (1)(e). The notice must include information regarding the original design capacities and configurations of the outfalls, intakes, and small impoundments.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373. 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.211 General Permit for Fish and Wildlife Harvesting, Enhancement, and Attraction Devices

(1) This general permit authorizes fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, fish aggregating devices (for research purposes only), and small fish attraction devices.

(2) This general permit does not authorize:

(a) Artificial reefs.

(b) Impoundments and semi-impoundments of state-assumed waters for the culture or holding of motile species such as lobster.

(c) The use of covered oyster trays or clam racks.

(d) Placement of materials for Live Rock culture.

(e) Harvesting of Live Rock.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.212 General Permit for Scientific Measurement Devices

(1) This general permit authorizes the following activities:

(a) Installation and removal of devices, whose purpose is to measure and record scientific data, such as staff gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures.

(b) Installation and removal of small weirs and flumes constructed primarily to record water quantity and velocity, provided the dredging or filling is limited to 25 cubic yards.

(2) Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.213 General Permit for Survey Activities

(1) This general permit authorizes the following activities:

(a) Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this general permit, the term "exploratory trenching" means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a state-assumed water. In wetlands, the top 6 to 12 inches of the trench shall be backfilled with topsoil from the trench.

(b) The construction of temporary pads, provided the fill does not exceed 1/10-acre in waters of the U.S.

(2) This general permit does not authorize:

(a) Dredging, filling, or structures associated with the recovery of historic resources.

(b) Drilling and the sidecasting of excavated material from test wells for oil and gas exploration; however, the plugging of such wells is authorized.

(c) Fill placed for roads and other similar activities.

(d) Permanent structures.

(e) Seismic exploratory devices within the limits of the Everglades as defined in Sections 403.031(13)(a) and (b), F.S., and the Big Cypress and Water Conservation Areas 1, 2A, 2B, 3, and 3A.

(3) Notice of intent to use this general permit is required for Seismic exploratory activities in state-assumed waters accessible to any federal listed species.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.214 General Permit for Outfall and Intake Structures

(1) This general permit authorizes activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under Part I of Chapter 403, F.S.

(2) This general permit does not authorize the construction of intake structures, unless they are directly associated with an authorized outfall structure.

(3) Notification: The permittee must submit a notice to the Agency prior to commencing the activity.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.215 General Permit for Utility Line Activities

(1) This general permit authorizes the following activities:

(a) Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in state-assumed waters, provided the activity does not result in the loss of greater than 1/2-acre of state-assumed waters for each single and complete project.

1. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication. The term "utility line" does not include activities that drain a state-assumed water, such as drainage tile or French drains, but it does apply to pipes conveying drainage from another area.

2. Material resulting from trench excavation may be temporarily sidecast into state-assumed waters for no more than three months, provided the material is not placed in such a manner that it is dispersed by stormwater or other forces. The Agency may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. For a trench with a top width greater than three feet in herbaceous wetlands, the upper layer of the soil horizon shall initially be scraped and segregated into a spoil bank that is separated from the spoil bank resulting from the excavation of the trench for the utility line. The upper layer of the soil horizon shall be replaced as the last step of restored grades to facilitate natural revegetation. The trench cannot be constructed or backfilled in such a manner as to drain state-assumed waters (e.g., backfilling with extensive gravel layers, creating a French drain effect).

3. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

4. For overhead utility lines authorized by this general permit, a copy of the notice will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

(b) Construction, maintenance, or expansion of substation facilities associated with a power line or utility line in state-assumed waters, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of state-assumed waters.

(c) Construction or maintenance of foundations for overhead utility line towers, poles, and anchors in state-assumed waters, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(d) Construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in state-assumed waters, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of state-assumed waters.

1. Access roads must be the minimum width necessary.

2. Access roads must be constructed so that the length of the road minimizes any adverse effects on state-assumed waters and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in state-assumed waters must be properly bridged or culverted to maintain surface flows.

3. Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this general permit.

4. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills as referenced in paragraph (f), below.

(e) Temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to state-assumed waters through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

1. These remediation activities must be done as soon as practicable, to restore the affected waterbody.

2. Permittees must prepare a frac-out plan prior to construction that meets the requirements of section 3.2.1.3 of the 404 Handbook.

(f) Temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity.

1. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and fill, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites.

2. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows or stormwater.

3. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations.

4. The areas affected by temporary fills must be revegetated.

(2) This general permit does not authorize:

(a) Dredging or filling in non-tidal wetlands adjacent to tidal retained waters to construct, maintain, or expand substation facilities.

(b) Dredging or filling in nontidal wetlands adjacent to tidal retained waters for access roads.

(3) A notice of intent to use this general permit is required prior to commencing the activity if any of the following criteria are met:

(a) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way.

(b) The utility line in state-assumed waters, excluding overhead lines, exceeds 500 feet.

(c) The utility line is placed within a state-assumed water, and it runs parallel to or along a stream bed that is within that area of state-assumed waters.

(d) Activities that result in the loss of greater than 1/10-acre of state-assumed waters.

(e) The activity is within forested wetlands. (f) Permanent access roads are constructed above grade in state-assumed waters for a distance of more than 500 feet.

(g) Permanent access roads are constructed in state-assumed waters with impervious materials.

(l) The project is in the following rivers, creeks, and their tributaries:

1. Escambia River

2. Yellow River

3. Shoal River

4. Choctawhatchee River

5. Chipola River

6. Apalachicola River

7. Ochlockonee River

8. Santa Fe River

9. New River (Bradford and Union County line)

10. Econfina Creek (4) For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of general permit authorization.

(5) For activities that require notice of intent to use this general permit, the notice must include any other general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require a general permit authorization but do not require submittal of a notice of intent.

(6) The agency shall require mitigation, when necessary, to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.216 General Permit for Bank Stabilization

(1) This general permit authorizes the following activities:

(a) Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

1. No material is placed in excess of the minimum needed for erosion protection;

2. The activity is no more than 500 feet in length along the bank, unless the Agency waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse

environmental effects (an exception is for bulkheads—the Agency cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

3. The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the mean or ordinary high water line, unless the Agency waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

4. The activity does not involve dredging or filling into special aquatic sites, unless the Agency waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

5. No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any state-assumed water;

6. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);

7. Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;

8. The activity is not a stream channelization activity; and

9. The activity must be properly maintained, which may require repairing it after severe storms or erosion events.

(b) Maintenance and repair of the bank stabilization activities if they require authorization.

(c) Temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity.

1. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and fill [including cofferdams] are necessary for construction activities, access fills, or dewatering of construction sites.

2. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows or stormwater.

3. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations.

4. The areas affected by temporary fills must be revegetated.

(2) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity if the bank stabilization activity:

(a) Involves dredging or filling into special aquatic sites;

(b) Is in excess of 500 feet in length;

(c) Will involve filling greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the mean or ordinary high water line;

or

(d) The project is in the following rivers, creeks, and their tributaries:

1. Escambia River

2. Yellow River

3. Shoal River

4. Choctawhatchee River

5. Chipola River

6. Apalachicola River

7. Ochlockonee River

8. Santa Fe River

9. New River (Bradford and Union County line)

10. Econfina Creek

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.217 General Permit for Linear Transportation Projects

(1) This general permit authorizes the following activities:

(a) Activities required for crossings of state-assumed waters associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in state-assumed waters.

1. The activity cannot cause the loss of greater than 1/2-acre of state-assumed waters.

2. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

(b) Temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project.

1. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and fill, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites.

2. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows.

3. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations.

4. The areas affected by temporary fills must be revegetated.

(2) This general permit does not authorize:

(a) Non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

(b) Activities within the Belle Meade South area bounded by I-75 to the north, CR 951 to the west, Miller Canal to the east, and U.S. 41 to the south in Collier County.

(c) Activities within Golden Gate Estates, south of Alligator Alley in Collier County.

(d) Activities within Golden Gate Estates, that together with other activities exceed 0.5 acres of dredging or filling within Golden Gate Estates north of Alligator Alley in Collier County.

(3) The permittee must submit a notice of intent to use this general permit to the agency prior to commencing the activity if:

(a) The loss of state-assumed waters exceeds 1/10-acre.

(b) There is dredging or filling in a special aquatic site, including wetlands.

(c) The project is in the following rivers, creeks, and their tributaries.

1. Escambia River

2. Yellow River

3. Shoal River

4. Choctawhatchee River

5. Chipola River

6. Apalachicola River

7. Ochlockonee River

8. Santa Fe River

9. New River (Bradford and Union County line)

10. Econfina Creek

(4) For activities that require notice of intent to use this general permit, the notice must include any other general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require authorization but do not require submittal of a notice of intent.

(5) For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of the general permit authorization.

(6) The Agency shall require mitigation, when necessary, to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.218 General Permit for Return Water from Upland Contained Disposal Areas

(1) This general permit authorizes return water from an upland contained dredged material disposal area, when:

(a) The return water will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62- 4.242(2) and (3), F.A.C., and Rule 62-302.300,

F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated;

(b) The return water is not part of an activity that requires an individual permit (if so, return water will be addressed within the individual permit).

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.219 General Permit for Hydropower Projects

(1) This general permit authorizes dredging or filling associated with hydropower projects having:

(a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920; or

(b) A licensing exemption granted by the FERC pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. §§ 2705 and 2708) and section 30 of the Federal Power Act.

(2) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.220 General Permit for Minor Activities

(1) This general permit authorizes minor dredge or fill activities in state-assumed waters, provided the activity meets all of the following criteria:

(a) The quantity of fill and the volume of material excavated do not exceed 25 cubic yards below the plane of the mean or ordinary high water line;

(b) The activity will not cause the loss of more than 1/10-acre of state-assumed waters; and

(c) The activity is not conducted for the purpose of a stream diversion.

(2) This general permit does not authorize projects that capture and store water, such as Dispersed Water Management Projects (DWMP).

(3) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity if:

(a) The fill or the volume of material excavated exceeds 10 cubic yards below the plane of the mean or ordinary high water line;

(b) The activity is in a special aquatic site, including wetlands;

or

(c) The project is in the following rivers, creeks, and their tributaries:

1. Escambia River

2. Yellow River

3. Shoal River

4. Choctawhatchee River

5. Chipola River

6. Apalachicola River

7. Ochlockonee River

8. Santa Fe River

9. New River (Bradford and Union County line)

10. Econfina Creek

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.221 General Permit for Response Operations for Oil or Hazardous Substances

(1) This general permit authorizes:

(a) Activities conducted in response to a spill or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300 as of July 1, 2019,

incorporated by reference herein (https://flrules.org/Gateway/reference.asp?No=Ref-12043)), including containment, cleanup, and mitigation efforts, provided that the activities are done under either:

1. The Spill Control and Countermeasure Plan required by 40 CFR § 112.3 as of July 1, 2019, incorporated by reference herein (https://flrules.org/Gateway/reference.asp?No=Ref-12044));

2. The direction or oversight of the federal on-scene coordinator designated by 40 CFR Part 300; or

3. Any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts.

(b) Activities required for the cleanup of oil releases in state-assumed waters from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR Part 761 as of July 1, 2019, incorporated by reference herein (https://flrules.org/Gateway/reference.asp?No=Ref-12045)).

(c) The use of temporary structures and fills in state-assumed waters for spill response training exercises.

(2) Use of this general permit is subject to the following conditions:

(a) Activities shall be conducted in conformance with the National Response Team Integrated Contingency Plan Guidance (June 5, 1996), incorporated by reference herein (https://flrules.org/Gateway/reference.asp?No=Ref-12046);

(b) Activities shall be conducted in conformance with any applicable emergency order for oil spill or hazardous waste control, clean-up, and recovery/restoration issued by the Department.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.222 General Permit for Removal of Vessels

(1) This general permit authorizes temporary structures or minor dredging or filling required for the removal of wrecked, abandoned, or disabled vessels.

(2) This general permit does not authorize maintenance dredging, shoal removal, or riverbank snagging.

(3) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity if:

(a) The activity is conducted in a special aquatic site, including wetlands;

or

(b) The vessel is listed or eligible for listing in the National Register of Historic Places. If this condition is triggered, the permittee cannot commence the activity until informed by the Agency that compliance with the "Historic Properties" general condition is completed.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New_____.

62-331.223 General Permit for Approved Categorical Exclusions

(1) This general permit authorizes activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by a federal agency or department, where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act, that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Corps) has concurred that the activity is categorically excluded. The list of activity types for which the Office of the Chief of Engineers has concurred categorical exclusion can be found in the current Corps' Regulatory Guidance Letter (RGL) regarding categorical exclusions. Current RGLs can be found online in the Corps' Jacksonville District Regulatory Division Sourcebook.

(2) Use of this general permit is subject to any specific conditions required by the Agency or listed in the current RGL by the Office of the Chief of Engineers.

(3) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity if the current RGL regarding categorical exclusions require submittal of a pre-construction notice for the activity;

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New_____.

62-331.224 General Permit for Structural Activities

(1) This general permit authorizes the placement of fill material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, including the excavation of bottom material from within the form prior to the placement of concrete, sand, rock, etc.

(2) This general permit does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.225 General Permit for Aquatic Habitat Restoration, Enhancement, and Creation Activities

(1) This general permit authorizes the following activities:

(a) Activities in state-assumed waters associated with the restoration, enhancement, and creation of non-tidal wetlands and riparian areas, the restoration and enhancement of streams and other open waters, provided those activities result in net increases in aquatic resource functions and services. To the extent that an activity requires a Section 404 permit, the activities authorized by this general permit, include, but are not limited to:

1. The removal of accumulated sediments;

2. The installation, removal, and maintenance of small water control structures, dikes, and berms, as well as dredging or filling to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed;

3. The installation of current deflectors;

4. The enhancement, rehabilitation, or re-establishment of riffle and pool stream structure;

5. The placement of in-stream habitat structures;

6. Modifications of the stream bed and/or banks to enhance, rehabilitate, or re-establish stream meanders;

7. The removal of stream barriers, such as undersized culverts, fords, and grade control structures;

8. The backfilling of artificial channels;

9. The removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology;

10. The installation of structures or fills necessary to restore or enhance wetland or stream hydrology;

11. The construction of open water areas;

12. Activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species;

13. Re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed;

14. Mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation;

15. Other related activities.

(b) Relocation of waters, including wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

(2) This general permit does not authorize:

(a) The conversion of a stream or natural wetlands to another aquatic habitat type (*e.g.*, the conversion of a stream to wetland or vice versa) or uplands, except for the relocation of waters on the project site. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type.

(b) Stream channelization.

(c) Lake restoration projects proposing any type of in-lake disposal of dredged or fill material.

(3) Authorized activities are subject to the following conditions:

(a) The aquatic habitat restoration, enhancement, or creation activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of an intact aquatic habitat or riparian area of the same type that exists in the region, or it may be based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area.

(b) Only native plant species shall be planted at the site.

(c) Reporting. For those activities that do not require submittal of a notice of intent, the permittee must submit a report the to the Agency at least 30 days prior to commencing activities in state-assumed waters authorized by this general permit. The report shall include:

1. Information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats; and

2. A copy of:

a. The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or creation agreement, or a project description, including project plans and location map;

b. The Natural Resources Conservation (NRCS) or U.S. Department of Agriculture (USDA) Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or creation action; or

c. The Surface Mining Control and Reclamation Act permit issued by Office of Surface Mining Reclamation and Enforcement or the applicable state agency.

(4) Compensatory mitigation is not required for activities authorized by this general permit since these activities must result in net increases in aquatic resource functions and services.

(5) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing any activity, except for the following activities:

(a) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), NRCS, the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), the U.S. Forest Service (USFS), or their designated state cooperating agencies; or

(b) Voluntary stream or wetland restoration or enhancement action, or wetland creation action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards.

(6) This general permit can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects.

(7) If a site is to be reverted back to its documented prior condition, when the reversion will be conducted as described in paragraphs (a) through (c), below, the agreement or general permit shall contain language specifically

stating the intent to revert at a later date. The reversion activities will require authorization through the use of the general permit in Rule 62-331.226, F.A.C., or a State 404 Program individual permit for activities associated with reversion but outside of the scope of the original permit.

(a) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland creation agreement, between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or their designated state cooperating agencies; or

(b) As a component of voluntary wetland restoration, enhancement, and creation actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards.

(c) In state-assumed waters for reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or state agencies (even though the restoration, enhancement, or creation activity did not require a Section 404 permit).

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.226 General Permit for Specific Reversion Activities

(1) This general permit authorizes dredging or filling associated with the reversion of an area permitted under Corps Nationwide Permit 27, the general permit under Rule 62-331.225, F.A.C., or any other applicable ERP or Section 404 permit that specifically references reversion, to its documented prior condition when the reversion is conducted:

(a) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland creation agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or a state agency; or

(b) As a component of voluntary wetland restoration, enhancement, and creation actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards.

(c) In state-assumed waters for reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or state agencies (even though the restoration, enhancement, or creation activity did not require a Section 404 permit).

(2) This general permit does not authorize reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

(3) Authorized activities are subject to the following conditions:

(a) The reversion activity has been evaluated by FWS under Section 7 or Section 10 consultation, and a Section 7 incidental take statement or Section 10 incidental take permit has been issued for the activity, if required. If Section 7 or Section 10 consultation for the reversion activities was completed for the original permit or agreement, specifically addresses the reversion, and there are no unexpected site conditions that had not previously been addressed, then a new consultation shall not be required.

(b) The prior condition and the option for reversion shall be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the federal agency or appropriate state agency executing the agreement or permit in which the reversion was identified.

(c) The reversion must be completed within five years after expiration of a limited term stream or wetland enhancement or restoration agreement, or a wetland creation agreement or permit.

(d) Reporting. The permittee must submit a report the to the Agency at least 30 days prior to commencing activities in state-assumed waters authorized by this general permit. The report shall include:

1. Information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats; and

2. A copy of:

a. The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or creation agreement, or a project description, including project plans and location map;

b. The NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or creation action;

c. The SMCRA permit issued by OSMRE or the applicable state agency;

d. The FWS biological assessment, including any applicable incidental take statement or permit.

(e) Once an area has been reverted to its prior physical condition, it will be subject to any regulatory requirements applicable to that type of land at the time.

(4) Notwithstanding the provisions of paragraphs 62-331.200(3)(c) through (j), F.A.C., notice of intent to use this general permit, other than submittal of the information in paragraph (3)(d), above, is not required for activities authorized under this general permit.

(5) Compensatory mitigation is not required for activities authorized by this general permit.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.227 General Permit for Residential Developments

(1) This general permit authorizes the following activities:

(a) Dredge or fill activities in state-assumed waters for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision.

(b) The construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

(2) The activity is subject to the following conditions:

(a) The activity must not cause the loss of greater than 1/2-acre of state-assumed waters.

(b) The activity must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the Agency waives the 300 linear foot limit by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(c) The loss of stream bed plus any other losses of state-assumed waters caused by the activity cannot exceed 1/2-acre.

(d) For residential subdivisions, the aggregate total loss of state-assumed surface waters authorized by this general permit cannot exceed 1/2-acre. This includes any loss of state-assumed waters associated with development of individual subdivision lots.

(3) This general permit does not authorize:

(a) Dredging or filling in non-tidal wetlands adjacent to tidal retained waters.

(b) Activities in Golden Gate Estates, south of Alligator Alley in Collier County.

(c) Activities in the Belle Meade South area bounded by I-75 to the north, CR 951 to the west, Miller Canal to the east, and U.S. 41 to the south in Collier County.

(d) Activities in the Florida panther consultation area (south of the Caloosahatchee River) as defined in the Florida panther effect determination key, incorporated by reference herein (https://flrules.org/Gateway/reference.asp?No=Ref-12047), and also available at https://www.fws.gov/verobeach/MammalsPDFs/20070219LetterSFESOtoCOEPantherKey.pdf.

(4) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.228 General Permit for Moist Soil Management for Wildlife

(1) This general permit authorizes the following activities dredging or filling in state-assumed waters and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include but are not limited to: plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation.

(2) This general permit does not authorize:

(a) Construction of new dikes, roads, water control structures, or similar features associated with the management areas.

(b) The conversion of wetlands to uplands, impoundments, or other open water bodies.

(3) Activities authorized under this general permit must not result in a net loss of aquatic resource functions and services.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.229 General Permit for Maintenance of Existing Flood Control Facilities

(1) This general permit authorizes the following activities:

(a) Dredging or filling resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that:

1. Were previously authorized by a Section 404 individual permit, general permit, or 33 CFR § 330.3, incorporated by reference in paragraph 62-331.210(1)(a), F.A.C., or did not require a permit at the time they were constructed; or

2. Were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance.

(b) Dredging or filling associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline. The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by this general permit, subject to any case-specific conditions required by the Agency. The Agency will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the adverse environmental impacts caused by the maintenance activities are no more than minimal, especially in maintenance areas where there are no constructed channels. (The Agency may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance

with Rule 62-331.080, F.A.C. Except in emergencies as described below, this general permit cannot be used until the Agency approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this general permit.

(c) The removal of vegetation from levees associated with the flood control project.

(2) Activities authorized by this general permit are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline", as described above.

(3) This general permit does not authorize:

(a) The removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline.

(b) Maintenance of a flood control facility that has been abandoned.

1. A flood control facility will be considered abandoned if it has been operating at a significantly reduced capacity or is nonfunctional because routine maintenance was not being accomplished for an extended period of time.

2. A flood control facility will not be considered abandoned if the prospective permittee is in the process of obtaining other authorizations or approvals required for maintenance activities and is experiencing delays in obtaining those authorizations or approvals.

(4) The activities must meet the following conditions:

(a) All dredged and excavated material must be deposited and retained in an area that has no state-assumed waters unless otherwise specifically approved by the Agency under separate State 404 permit authorization.

(b) Proper sediment controls must be used.

(5) The Agency will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved.

(a) Such one-time mitigation will be required when necessary to ensure that adverse environmental effects are no more than minimal, both individually and cumulatively.

(b) Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the Agency will not delay needed

maintenance, provided the Agency and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation.

(c) Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline.

(d) In determining appropriate mitigation, the Agency will give special consideration to natural water courses that have been included in the maintenance baseline and require mitigation and/or best management practices as appropriate.

(e) If mitigation was previously required and completed for the specific reach of the flood control project, additional mitigation for that specific reach will not be required.

(6) In emergency situations, this general permit may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved.

(a) Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved.

(b) In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved.

(c) Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

(d) The permittee must submit notice of intent to use this general permit to the Agency before any maintenance work is conducted.

1. The notice of intent to use this general permit may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan.

2. The notice of intent to use this general permit must include a description of the maintenance baseline and the disposal site for dredged or excavated material.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.230 General Permit for Completed Federal Enforcement Actions

(1) This general permit authorizes any structure, work, or activity remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(a) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act; or the terms of an EPA 309(a) order on consent resolving a violation of section 404 of the Clean Water Act, provided that:

1. The activities authorized by this general permit cannot adversely affect more than five acres of state-assumed waters;

2. The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that this general permit is authorizing; and

3. The Agency issues a verification letter authorizing the activity subject to the terms and conditions of this general permit and the settlement agreement, including a specified completion date; or

(b) The terms of a final federal court decision decree, or settlement agreement resulting from an enforcement action brought by the United States under section 404 of the Clean Water Act; or

(c) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR, part 300, subpart G, incorporated by reference in paragraph 62-331.221(1)(a), F.A.C., under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a State 404 program permit is required.

(2) Compliance is a condition of this general permit itself. Non-compliance of the terms and conditions of an authorization under this general permit may result in an additional federal and state enforcement action. Any authorization under this general permit is automatically revoked if the permittee does not comply with the terms of this general permit or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement.

(3) This general permit does not authorize any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.231 General Permit for Temporary Construction, Access, and Dewatering

(1) This general permit authorizes the following activities:

(a) Temporary structures, work, dredging, and filling, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Agency.

(b) Temporary structures, work, dredging, and filling, including cofferdams, necessary for construction activities not otherwise subject to permit requirements.

(2) The activities authorized by this general permit must meet the following conditions:

(a) Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding.

(b) Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows or stormwater. The use of dredged material may be allowed if the Agency determines that it will not cause more than minimal adverse environmental effects.

(c) Following completion of construction, temporary fill must be entirely removed to an area that has no state-assumed waters, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations.

(d) The affected areas must be revegetated.

(3) This general permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.233 General Permit for Boat Ramps

(1) This general permit authorizes the following activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

(a) Fill in state-assumed waters does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the Agency waives the 50 cubic yard limit by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(b) The boat ramp does not exceed 20 feet in width, unless the Agency waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(c) The base material is crushed stone, gravel, or other suitable material;

(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no state-assumed waters; and

(e) No material is placed in special aquatic sites, including wetlands.

(2) This general permit does not authorize:

(a) The use of unsuitable material that is structurally unstable.

(b) Dredging in navigable waters. This general permit shall not be used in areas without existing access to navigation channels where the minimum water depth for ingress or egress from the navigation channels is less than -3 feet at mean or ordinary low water.

(3) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity if:

(a) Fill to be placed in state-assumed waters exceeds 50 cubic yards.

(b) The boat ramp exceeds 20 feet in width.

(c) The project is in the following rivers, creeks, and their tributaries.

1. Escambia River

2. Yellow River

3. Shoal River

4. Choctawhatchee River

5. Chipola River

6. Apalachicola River

7. Ochlockonee River

8. Santa Fe River

9. New River (Bradford and Union County line)

10. Econfina Creek

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.234 General Permit for Emergency Watershed Protection and Rehabilitation

(1) This general permit authorizes work done by or funded by:

(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR Part 624 (Jan. 1, 2019));

(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13 (Jan. 12, 1995));

(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3 (Jan. 18, 2017));

(d) The Office of Surface Mining, Reclamation and Enforcement, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act or 30 CFR subchapter R (July 1, 2019); or

(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR Part 701 (Jan. 1, 2019)).

(2) In general, the prospective permittee shall wait until the Agency issues a general permit verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately, and the Agency will consider the information in the notice of intent to use this general permit and any comments received as a result of agency coordination to decide whether the general permit authorization should be modified, suspended, or revoked.

(3) Except in cases where delay would cause an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a notice of intent to the Agency prior to commencing the activity.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.235 General Permit for Cleanup of Hazardous and Toxic Waste

(1) This general permit authorizes the following activities:

(a) Specific activities required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority.

(b) Court ordered remedial action plans or related settlements.

(2) This general permit does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

(3) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.236 General Permit for Commercial and Institutional Developments

(1) This general permit authorizes dredging or filling in state-assumed waters for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures.

(a) Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields.

(b) Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers.

(c) Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

(2) This general permit does not authorize:

(a) The construction of new golf courses and new ski areas.

(b) Dredging or filling in non-tidal wetlands adjacent to tidal retained waters.

(c) Activities within Golden Gate Estates, south of Alligator Alley in Collier County.

(d) Activities within the Belle Meade South bounded by I-75 to the north, CR 951 to the west, Miller Canal to the east, and U.S. 41 to the south in Collier County.

(e) Activities in the Florida panther consultation area (south of the Caloosahatchee River) as defined in the Florida panther effect determination key, incorporated by reference in paragraph 62-331.227(3)(d), F.A.C., and also available at https://www.fws.gov/verobeach/MammalsPDFs/20070219LetterSFESOtoCOEPantherKey.pdf.

(3) This general permit is subject to the following conditions:

(a) The activity must not cause the loss of greater than 1/2-acre of state-assumed waters.

(b) The activity must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the Agency waives the 300 linear foot limit by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(c) The loss of stream bed plus any other losses of state-assumed waters caused by the general permit activity cannot exceed 1/2-acre.

(4) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity.

(5) For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the Notice and general permit verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New_____.

62-331.237 General Permit for Agricultural Activities

(1) This general permit authorizes the following activities:

(a) Dredging and filling in state-assumed waters for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in state-assumed waters; and similar activities.

(b) Construction of farm ponds in state-assumed waters, excluding perennial streams, provided the farm pond is used solely for agricultural purposes.

(c) Dredging or filling in state-assumed waters to relocate existing serviceable drainage ditches constructed in streams.

(2) This general permit does not authorize:

(a) Construction of aquaculture ponds.

(b) Dredging or filling in non-tidal wetlands adjacent to tidal retained waters.

(c) Activities within Golden Gate Estates, south of Alligator Alley in Collier County.

(d) Activities within the Belle Meade South bounded by I-75 to the north, CR 951 to the west, Miller Canal to the east, and U.S. 41 to the south in Collier County.

(e) Projects that capture and store water, such as Dispersed Water Management Projects (DWMP).

(3) The activities authorized by this general permit are subject to the following conditions:

(a) The activity must not cause the loss of greater than 1/2-acre of state-assumed waters.

(b) The activity must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the Agency waives the 300 linear foot limit by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(c) The loss of stream bed plus any other losses of state-assumed waters caused by the activity cannot exceed 1/2-acre.

(4) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.238 General Permit for Reshaping Existing Drainage Ditches

(1) This general permit authorizes dredging or filling in state-assumed waters, excluding non-tidal wetlands adjacent to tidal retained waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in state-assumed waters, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation.

(2) The reshaping of the ditch cannot:

(a) Increase drainage capacity beyond the original as-built capacity;

(b) Expand the area drained by the ditch as originally constructed;

(c) Change the rate or volume of water discharged from the site from original design capacity conditions.

(d) Cause erosion or sedimentation, or violate state water quality standards.

(3) Compensatory mitigation is not required because the work is designed to improve water quality.

(4) This general permit does not authorize:

(a) Relocation of drainage ditches constructed in state-assumed waters; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch.

(b) Stream channelization or stream relocation projects.

(c) Activities within Golden Gate Estates, south of Alligator Alley in Collier County.

(d) Activities within the Belle Meade South bounded by I-75 to the north, CR 951 to the west, Miller Canal to the east, and U.S. 41 to the south in Collier County.

(e) Projects that capture and store water, such as Dispersed Water Management Projects (DWMP).

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.239 General Permit for Recreational Facilities

(1) This general permit authorizes the following activities:

(a) Dredging or filling in state-assumed waters for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this general permit include playing fields (*e.g.*, football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks).

(b) Construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity.

(2) This general permit does not authorize:

(a) Construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

(b) Dredging or filling in non-tidal wetlands adjacent to tidal retained waters.

(c) Activities within Golden Gate Estates, south of Alligator Alley in Collier County.

(d) Activities within the Belle Meade South bounded by I-75 to the north, CR 951 to the west, Miller Canal to the east, and U.S. 41 to the south in Collier County.

(3) The activities are subject to the following conditions:

(a) The activity must not cause the loss of greater than 1/2-acre of state-assumed waters.

(b) The activity must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the Agency waives the 300 linear foot limit by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(c) The loss of stream bed plus any other losses of state-assumed waters caused by the activity cannot exceed 1/2-acre.

(4) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.240 General Permit for Stormwater Management Facilities

(1) This general permit authorizes the following activities:

(a) Dredging or filling in state-assumed waters for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities;

(b) The construction of water control structures, outfall structures and emergency spillways;

(c) The construction of low impact development integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches; and the construction of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters to meet reduction targets established under Total Daily Maximum Loads set under the Clean Water Act.

(d) To the extent that a Section 404 permit is required, dredging or filling in state-assumed waters for the maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green infrastructure features.

(2) This general permit does not authorize:

(a) Dredging or filling in non-tidal wetlands adjacent to tidal retained waters.

(b) Dredging or filling for the construction of new stormwater management facilities in perennial streams.

(c) Activities within Golden Gate Estates, south of Alligator Alley in Collier County.

(d) Activities within the Belle Meade South bounded by I-75 to the north, CR 951 to the west, Miller Canal to the east, and U.S. 41 to the south in Collier County.

(3) The authorized activities are subject to the following conditions:

(a) The activity must not cause the loss of greater than 1/2-acre of state-assumed waters.

(b) The activity must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the Agency waives the 300 linear foot limit by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(c) The loss of stream bed plus any other losses of state-assumed waters caused by the activity cannot exceed 1/2-acre.

(4) A notice of intent to use this general permit shall be submitted to the Agency for:

(a) Dredging or filling in state-assumed waters for the construction of new stormwater management facilities or pollutant reduction green infrastructure features,

(b) Expansion of existing stormwater management facilities or pollutant reduction green infrastructure features,

(c) Activities in wetlands adjacent to Deer Lake and its tributaries, Bay County.

(d) Maintenance activities do not require notice of intent if they are limited to restoring the original design capacities of the stormwater management facility or pollutant reduction green infrastructure feature.

(5) Projects adjacent to Tribal lands shall not be authorized without prior written approval from the respective Tribal entity.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.241 General Permit for Mining Activities

(1) This general permit authorizes dredging or filling in state-assumed waters for mining activities, provided the activity meets all of the following criteria:

(a) For mining activities involving dredging or filling in wetlands, the activity must not cause the loss of greater than 1/2-acre of wetlands;

(b) For mining activities involving dredging or filling in open waters (e.g., streams, lakes, and ponds) the mined area, including permanent and temporary impacts due to dredging or filling in state-assumed waters, must not exceed 1/2-acre; and

(c) The acreage loss under subparagraph (1)(a)1. plus, the acreage impact under subparagraph (1)(a)2. does not exceed 1/2-acre.

(2) This general permit does not authorize:

(a) Dredging or filling in non-tidal wetlands adjacent to tidal retained waters.

(b) Activities within Golden Gate Estates, south of Alligator Alley in Collier County.

(c) Activities in the Belle Meade North bounded by I-75 to the south, Golden Gate Canal to the west, and Miller Canal to the east, and Belle Meade South bounded by I-75 to the north, CR 951 to the west, Miller Canal to the east, and U.S. 41 to the south in Collier County, Florida.

(d) Activities within the Corkscrew Marsh Basin, south of S.R. 82, east of I-75 in Collier and Lee Counties.

(3) The authorized activities are subject to the following conditions:

(a) The activity must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the Agency waives the 300 linear foot limit by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(b) The loss of stream bed plus any other losses of state-assumed waters caused by the activity cannot exceed 1/2-acre.

(4) A notice of intent to use this general permit is required if reclamation is required by other laws. A copy of the final reclamation plan must be submitted with the notice of intent.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.242 General Permit for Repair of Uplands Damaged by Discreet Events

(1) This general permit authorizes the following activities:

(a) Dredging or filling in state-assumed waters for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events.

(b) Bank stabilization to protect the restored uplands.

(2) This general permit does not authorize:

(a) Beach restoration or nourishment.

(b) Reclamation of lands lost to normal erosion processes over an extended period

(3) The authorized activities are subject to the following conditions:

(a) The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or the mean or ordinary high water line, that existed before the damage occurred.

(b) The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the Agency.

(c) Dredging is limited to the amount necessary to restore the damaged upland area and shall not significantly alter the pre-existing bottom contours of the waterbody.

(4) The Agency shall determine the extent of the pre-existing conditions using best available evidence and shall limit the extent of any restoration work authorized by this general permit to pre-existing conditions that were legally in existence prior to the discreet event.

(5) The permittee must submit a notice of intent to use this general permit to the Agency within 12 months of the date of the damage; for major storms, floods, or other discrete events, the Agency may waive the 12-month limit for submitting a notice of intent if the permittee can demonstrate funding, contract, or other similar delays. The notice of intent must include the following:

(a) Documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration; and

(b) A sediment and erosion control plan.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.243 General Permit for Activities in Ditches

(1) This general permit authorizes activities in ditches that:

(a) Are constructed in uplands,

(b) Receive water from an area determined to be a water of the United States prior to the construction of the ditch,

(c) Divert water to an area determined to be a water of the United States prior to the construction of the ditch, and

(d) Are determined to be state-assumed waters.

(2) This general permit does not authorize:

(a) Dredging or filling in ditches constructed in streams or other state-assumed waters, or in streams that have been relocated in uplands.

(b) Activities that increase the capacity of the ditch and drain those areas determined to be state-assumed waters prior to construction of the ditch.

(c) Activities within Golden Gate Estates, south of Alligator Alley in Collier County.

(d) Activities within the Belle Meade South bounded by I-75 to the north, CR 951 to the west, Miller Canal to the east, and U.S. 41 to the south in Collier County.

(e) Projects that capture and store water, such as Dispersed Water Management Projects (DWMP).

(3) The authorized activities are subject to the condition that the activity must not cause the loss of greater than one acre of state-assumed waters.

(4) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.244 General Permit for Commercial Shellfish Aquaculture Activities

(1) This general permit authorizes the following activities:

(a) Dredging or filling in state-assumed waters for new and continuing commercial shellfish aquaculture operations in authorized project areas. For the purposes of this general permit, the project area is the area in which the operator is authorized to conduct commercial shellfish aquaculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. A "new commercial shellfish aquaculture operation" is an operation in a project area where commercial shellfish aquaculture activities have not been conducted during the past 100 years.

(b) The installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into state-assumed waters.

(c) Dredging or filling in state-assumed waters necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

(2) This general permit does not authorize:

(a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;

(b) The cultivation of an aquatic nuisance species as defined in the Aquatic Nuisance Prevention and Control Act, 16 U.S.C. §§ 4701 – 4751 (2018), incorporated by reference herein (https://flrules.org/Gateway/reference.asp?No=Ref-12048);

(c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into state-assumed waters as waste;

(d) Activities that directly affect more than 1/2-acre of submerged aquatic vegetation beds in project areas that have not been used for commercial shellfish aquaculture activities during the past 100 years;

(e) Placement of materials for Live Rock culture; or

(f) Harvesting of Live Rock.

(3) This general permit is subject to the condition that in order to prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional nuisance species management plan.

(4) The permittee must submit a notice of intent to use this general permit to the Agency if:

(a) The activity will include a species that has never been cultivated in the waterbody;

(b) The activity occurs in a project area that has not been used for commercial shellfish aquaculture activities during the past 100 years;

(5) If a notice of intent is required, the permittee must include the following with the notification:

(a) A map showing the boundaries of the project area(s), with latitude and longitude coordinates for each corner of each project area;

(b) The name(s) of the species that will be cultivated during the period this general permit is in effect;

(c) Whether canopy predator nets will be used;

(d) Whether suspended cultivation techniques will be used;

(e) General water depths in the project area(s) (a detailed survey is not required); and

(f) A description of all species and culture activities the operator expects to undertake in the project area or group of contiguous project areas during the effective period of this general permit.

(6) If an operator intends to undertake unanticipated changes to the commercial shellfish aquaculture operation during the effective period of this general permit, and those changes require authorization under this Chapter, the operator must contact the Agency to request a modification of the general permit verification; a new notice of intent does not need to be submitted.

(7) No more than one notice of intent per project area or group of contiguous project areas shall be submitted for the commercial shellfish operation during the effective period of this general permit.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.245 General Permit for Land-Based Renewable Energy Generation Facilities

(1) This general permit authorizes dredging or filling in state-assumed waters for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features.

(a) Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy.

(b) Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land- based renewable energy generation facility.

(2) This general permit does not authorize:

(a) Dredging or filling in non-tidal wetlands adjacent to tidal retained waters.

(b) Activities within Golden Gate Estates, south of Alligator Alley in Collier County.

(c) Activities within the Belle Meade South bounded by I-75 to the north, CR 951 to the west, Miller Canal to the east, and U.S. 41 to the south in Collier County.

(3) The activities are subject to the following conditions:

(a) The activity must not cause the loss of greater than 1/2-acre of state-assumed waters.

(b) The activity must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the Agency waives the 300 linear foot limit by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(c) The loss of stream bed plus any other losses of state-assumed waters caused by the activity cannot exceed 1/2-acre.

(d) Projects must comply with the USFWS Land-Based Wind Energy Guidelines, incorporated by reference herein (https://flrules.org/Gateway/reference.asp?No=Ref-12049), and also available at (https://www.fws.gov/ecological-services/es-library/pdfs/WEG_final.pdf).

(4) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity if the activity results in the loss of greater than 1/10- acre of state-assumed waters.

(5) Utility lines constructed to transfer the energy from the land-based renewable energy generation facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by the general permit in Rule 62-331.215, F.A.C.

(6) For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the notice and general permit verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.246 General Permit for Water-Based Renewable Energy Generation Pilot Projects

(1) This general permit authorizes dredging or filling in state-assumed waters for the construction, expansion, modification, or removal of water-based wind, water-based solar, wave energy, or hydrokinetic renewable energy generation pilot projects and their attendant features.

(a) Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

(b) For the purposes of this general permit, the term "pilot project" means an experimental project where the water-based renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site.

(2) This general permit is subject to the following conditions:

(a) The activity must not cause the loss of greater than 1/2-acre of state-assumed waters, including the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds when the Agency waives the 300 linear foot limit by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects.

(b) The loss of stream bed plus any other losses of state-assumed waters caused by the general permit activity cannot exceed 1/2-acre.

(c) For each single and complete project, no more than 10 generation units (e.g., wind turbines, wave energy devices, or hydrokinetic devices) are authorized.

(d) For floating solar panels, each single and complete project cannot exceed 1/2- acre in water surface area covered by the floating solar panels.

(e) Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed to the maximum extent practicable unless they are authorized by a separate authorization under this Chapter. Completion of the pilot project will be identified as the date of expiration of the Federal Energy Regulatory Commission (FERC) license, or the expiration date of the general permit authorization if no FERC license is required.

(3) This general permit is not applicable within Designated Critical Resource Waters or other state and federally managed areas such as marine sanctuaries, Habitat Areas of Particular Concern (HAPC), aquatic preserves, and parks.

(4) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing the activity.

(5) Utility lines constructed to transfer the energy from the land-based collection facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by general permit Rule 62-331.215, F.A.C. or another authorization under this Chapter.

(6) An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate approval from the Chief of Engineers or District Engineer under 33 U.S.C. § 408. The permittee is responsible for obtaining such approval separately from the Corps.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.247 General Permit for Removal of Low-Head Dams

(1) This general permit authorizes structures, work, dredging, and filling associated with the removal of low-head dams. For the purposes of this general permit, the term "low-head dam" is defined as a dam built across a

stream to pass flows from upstream over all, or nearly all, of the width of the dam crest on a continual and uncontrolled basis. During a drought, there might not be water flowing over the dam crest. Low-head dams do not have a separate spillway or spillway gates, but it may have an uncontrolled spillway. The dam crest is the top of the dam from left abutment to right abutment, and if present, an uncontrolled spillway. A low-head dam provides little storage function.

(2) This general permit is subject to the following conditions:

(a) The removed low-head dam structure must be deposited and retained in an upland area, unless otherwise specifically approved by the Agency under separate authorization;

(b) The Agency may require compensatory mitigation if the net increase in ecological function from the removal and any related restoration activities does not fully offset any loss in ecological function resulting from the dam removal.

(c) In waters accessible to manatees, the Agency shall coordinate with the appropriate state or federal wildlife agency so that appropriate action can be taken to limit potential adverse effects to manatees.

(3) This general permit does not authorize:

(a) Dredging, filling, work, or structures to restore the stream in the vicinity of the low-head dam, including the former impoundment area. Such projects may be authorized under the general permit in Rule 62-331.225, F.A.C., or an individual permit.

(b) Dredging, filling, work or structures to stabilize stream banks. Bank stabilization activities may be authorized by the general permit in Rule 62-331.216, F.A.C., or an individual permit.

(4) The permittee shall submit a notice of intent to use this general permit to the Agency prior to commencing the activity.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.

62-331.248 General Permit for Florida Department of Transportation and Florida's Turnpike Enterprise

(1) This general permit authorizes activities required for the construction of Florida Department of Transportation (FDOT) and Florida's Turnpike Enterprise (FTE) projects, with a Federal Highway Administration (FHWA) and/or FDOT approved Environmental Document (PD&E, Categorical Exclusion, Environmental

Assessment, Environmental Impact Statement, or State Environmental Impact Report), including non-capacity and capacity improvements, where dredge and fill impacts do not result in the loss of greater than 5.0 acres of state-assumed waters (wetlands and surface waters) for any 1-mile segment of roadway length up to a maximum loss of 50 acres of state-assumed waters per project. This includes FTE projects with an approved state Environmental Document. Secondary impacts associated with projects authorized under this general permit shall be assessed, however, secondary impact acreages will not count toward the impact acreage limits (5.0 acres/1-mile and 50 acres total) within this general permit.

(2) This general permit does not authorize construction of a new alignment (non-existing roadway).

(3) This general permit is subject to the following conditions:

(a) Use of this general permit is limited to linear transportation projects that have been reviewed through the FDOT Efficient Transportation Decision Making (ETDM) and/or Project Development and Environment (PD&E) Study. The environmental documents must have been evaluated, re-evaluated, or confirmed to be current within five years of submittal of an application.

(b) The term "capacity" is used to express the maximum number of vehicles or persons that can pass a point on a roadway during a given time period under prevailing roadway and traffic conditions. A capacity improvement project is normally implemented by the addition of through travel lanes. A capacity improvement project can also be a new interchange or new intersection that is contiguous and connects to an existing roadway but would not include a new interchange or intersection that results in a new roadway alignment. Non-capacity improvement projects may include safety improvements, maintenance, bike lane, or sidewalk additions.

(c) No work shall be performed until the permittee submits satisfactory plans for the proposed activity and receives written authorization from the Agency.

(d) If the project includes modification of a federal project, no work shall be performed until the permittee receives authorization under 33 U.S.C § 408 from the Corps of Engineers.

(e) Conformance with the descriptions, quantities, and criteria in this general permit does not guarantee authorization under this general permit. The Agency reserves the right to require that any request for authorization under this general permit be evaluated as an individual permit.

(f) A copy of all "Commitments" related to the avoidance and minimization of impacts to state-assumed waters identified in any completed Environmental Documents and the Quality Enhancement Strategies (QES) (effective

date), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12075), shall be submitted with the permit application prior to verification of this general permit.

(g) Prior to the verification of qualification for this general permit; the applicant shall provide the Agency with copies of the concurrence documents from the State Historic Preservation Officer (SHPO) in Tallahassee and the Tribal Historic Preservation Officer (THPO) where applicable.

(h) Cultural Resources and/or Historic Properties. In addition to the conditions for general permits in Rule 62-331.200, F.A.C., the following shall apply:

1. No structure or work shall adversely affect, impact, or disturb properties listed in the National Register of Historic Places (NRHP), or those eligible for listing in the NRHP where the adverse effect, impact, or disturbance has not been resolved through consultation with the SHPO.

2. The applicant shall determine and document, in consultation with SHPO, the scope of identification efforts for cultural resources within the undertaking's area of potential effect and establish a determination of effects based upon these efforts. Documentation of this scope of identification efforts and determination shall be provided in summary form to the Agency along with the concurrence documents from SHPO.

3. If an archaeological monitor is required, A professional archeologist who meets the "Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines" shall be onsite during the initial ground-disturbing activities. The professional archeologist shall be responsible for monitoring the spoil and ground disturbance for archaeological deposits. Should potential significant archaeological deposits (which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), recovery be encountered, all work and ground disturbing activities must cease within a 100-meter diameter of the discovery to allow for proper assessment, recording, and recovery of the cultural deposits in a professional manner. The archeologist on site shall notify the Permittee, SHPO, and the Agency the same business day to assess the significance of the discovery and devise appropriate actions, including salvage operations, coordination with the SHPO/THPO, Tribes, and other consulting parties, as appropriate and in compliance with applicable historic preservation laws. Upon completion of the monitoring activities, an archaeological letter must be submitted to the Director of Florida's Division of Historical Resources (who also serves as the SHPO), along with an updated Florida Master Site File form and, as appropriate, a monitoring report.

(i) Compensatory Mitigation.

1. Mitigation may be accomplished by one or more of the following mechanisms and preference hierarchy.

a. Securing appropriate number and resource type of credits from approved mitigation bank within the project's service area;

b. Payment of mitigation fees to an approved in-lieu program within the project's service area;

c. Through a "permittee-responsible" mitigation, including those mitigation projects that are part of the FDOT Mitigation Program in Section 373.4137, F.S.; on-site and in-kind mitigation; or off-site or out-of-kind compensatory mitigation.

d. It is the responsibility of the applicant to demonstrate to the Agency that the mitigation proposal is the environmentally preferable option to replace the ecological functions and services that would be lost though the implementation of any work proposed. All mitigation proposals must be approved prior to verification of this general permit.

2. Prior to proceeding with the activity authorized in this general permit, a final mitigation plan must be approved by the Agency. If the approved mitigation plan is the purchase of mitigation bank or in lieu fee credits, the credits must be purchased or in-lieu fees paid prior to proceeding.

3. When the purchase of mitigation credits is applicable, the Permittee shall provide verification to the Agency indicating the number and type of credits purchased and the specific federal mitigation bank from which credits have been purchased. When payment of in-lieu fees is applicable, evidence of fee payment shall be provided to the Agency. The above-described verification or notification shall be provided to the Agency before commencement of the activities authorized by this general permit.

4. If the general permit verification includes permittee-responsible mitigation, the mitigation plan shall address the components of a complete mitigation plan as described in Rule 62-331.130, F.A.C.

(j) Prior to the verification of projects pursuant to this general permit, the applicant (FDOT, FTE, FHWA, or others) shall provide the Agency with a copy of either a concurrence document (May Affect, Not Likely to Adversely Affect determinations) or a finalized biological opinion (for May Affect, Likely to Adversely Affect determinations) written by the U.S. Fish and Wildlife Service (USFWS). These documents demonstrate that project consultation for federally listed species has been completed.

(k) No authorizations under this general permit shall be made for projects that jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify designated critical habitat.

(l) No authorizations under this general permit shall be made for projects resulting in any direct, indirect, or cumulative effect on very rare species, specifically the endangered Perdido Key beach mouse, Choctawhatchee beach mouse, and the St. Andrew beach mouse.

(m) All terms and conditions provided by the USFWS and/or the FWC shall be included as a special condition of any projects verified under this general permit.

(n) This general permit does not authorize stream channelization or the bank-to-bank filling and relocating and/or culverting of more than 300 linear feet of perennial or intermittent natural stream systems. Ditches, canals, swales or other non-natural channelized systems are not included in this restriction. The authorized activities shall not increase flooding, or negatively impact the pre-project hydrologic flow characteristics or water quality of any affected stream. This permit does not authorize severance of connections to upstream or downstream waters.

(o) To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters shall be maintained for each activity, including stream channelization and stormwater management activities, except as provided below. The activity shall be constructed to withstand expected high flows. The activity shall not restrict nor impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open water if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

(p) This general permit does not authorize fill activities which would sever hydrologic connection between wetlands or other surface waters.

(q) Best management practices for erosion and sediment control shall be used to prevent water quality violations during and after construction. These shall include a construction-phase stormwater management and erosion control plan that is designed and implemented to include site-specific measures adapted from practices and procedures described in "The State of Florida Erosion and Sediment Control Designer and Reviewer Manual, FDOT and FDEP" (June 2007), incorporated by reference in subparagraph 62-330.050(9)(b)5., F.A.C. (https://www.flrules.org/Gateway/reference.asp?No=Ref-02530).

(r) Authorization under this general permit is void at any time if the information provided by the applicant in support of the permit application proves to have been false, incomplete, or inaccurate.

(s) The permittee shall comply with USFWS "Standard Protection Measures for the Eastern Indigo Snake" (Aug. 12, 2013), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12076).

(t) For projects accessible to manatees, the Permittee shall comply with the "Standard Manatee Conditions for In-Water Work" (2011), incorporated by reference in paragraph 62-331.201(4)(n), F.A.C.

(u) As-Built Certification. Within 60 days of completion of the work authorized by this permit, the Permittee shall submit to the Agency as-built drawings of the authorized work and a completed Form 62-331.248(1) "As-Built Certification By Professional Engineer", incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-12077). The as-built drawings shall be signed and sealed by a registered professional engineer and include the following:

1. A plan view drawing of the location of the authorized work footprint, as shown on the permit drawings, with transparent overlay of the work as constructed in the same scale as the permit drawings on 8½-inch by 11-inch sheets. The plan view drawing should show all "earth disturbance," including wetland impacts and water management structures.

2. A list of any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the attached "As-Built Certification By Professional Engineer" form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or "As-Built Certification By Professional Engineer" form does not constitute approval of any deviations by the Agency.

3. Include the permit number on all sheets submitted.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1) FS. Law Implemented 373.118, 373.129, 373.136, 373.413, 373.4131, 373.414, 373.4145, 373.4146, 373.416, 373.422, 373.423, 373.429 FS. History – New _____.